IN THE

Supreme Court of the United States,

No. 152.

DECEMBER TERM, 1868.

DE LORMA BROOKS, Appellant,

—vs.—

WARRICK MARTIN, Appellee.

BRIEF FOR W. MARTIN,

BY MAT. H. CARPENTER.

INDEX.

General Statement of the Case 1
Martin went South for Health in 1846 4
Brooks was Clerk of Martin and Embarrassed 5
Partnership formed—Copy of Articles 6
Purpose for which Partnership was formed 8
Legality of the Business 9
Brooks & Field entered upon the Business 12
Martin's Advances to the Firm 14
Brooks & Field left New Orleans in July, 1847 17
Martin gave Brooks Power of Attorney 17
Brooks was to account to Martin, as his Agent, and S. C. Field was to account to Brooks 19, 20
George B. Field was employed by Brooks 20
Brooks gave specific orders to all the Fields, and they obeyed him 25
B. F. Field was the agent of Brooks alone 31
Yellow Fever in New Orleans, and financial crisis of 1847 ... 33
Meeting of Brooks and Martin in Washington, last of August, 1847 34
Meeting of Brooks and Martin in Pittsburgh, Sept. 7, 1847 ... 35
Business was to be closed up in 60 or 90 days 37
It was not contemplated to enter Lands 39
Martin had ordered Field to make no more purchases 41
Brooks represented to Martin it was necessary for him to draw on Martin 42
Brooks visit to New Orleans in January, 1848 55
Delay in Obtaining Warrants 56

Caveats 58
Powers of Attorney 60
Brooks learned of the Failure of Lake & Co 63
What Brooks learned in New Orleans in May, 1848 64
Brooks requests the Meeting with Martin 65
The Orders for the Entry of Lands 66
The Reason Assigned by Brooks why Lands were Entered ... 79
Order to Keep Lands, when Entered, from Sale 84
Sales on Credit 85
Brooks Ordered Field not to Send Money to Martin 87
Brooks tried to Keep Field & Martin from Corresponding 87
Brooks ordered G. B. Field not to Correspond with Martin 89
G. B. Field suggested remitting to Martin, and Brooks is troubled 92
Brooks applauds the wisdom of B. F. Field, and tells him to answer no questions 93
The fiduciary relations of Brooks, and the law applicable thereto 98
Bill and Answer, Relating to Meeting at Pittsburgh, June 28, 1848 102
Admissions of Brooks as to what he Stated to Martin at that Meeting 107
Payment Made to Martin, June 28, 1848 109
Condition of the Business June 28, 1848 110
Powers of Attorney at that time 113
Lands were not Dull of Sale 121
Emigration to California 125
Brooks did make the Proposition to Buy or Sell 126
Martin was not able to Buy 127
Martin did not take Accounts to Meeting 128
Statement of Brooks that the Liabilities of the firm could not be paid in one or two years, not true 129
G. B. Field and S. C. Field did render Accounts to Brooks in Dec., 1847 141
Account of 27th April, 1848, imperfect 144
Health and troubles of Martin, June 28, 1848 154

Relative condition of Brooks and Martin, June 28, 1848..... 161
The Sale must be set aside..... 163
False Statements in the Answer..... 164
False Accounts of Money received..... 172
The Division in November, 1848..... 182
The Legal Effects of the Division..... 189
Field not a Necessary Party..... 193
After the Division, S. C. Field the Agent of Brooks..... 195
B. F. Field was Agent of Brooks after the Division..... 197
S. C. Field, G. B. Field, B. F. Field, C. D. Cole, G. C Cole, and H. H. Gray paid Brooks all the money they received.. 199
Satute of Limitations..... 199
Conclusion..... 208

1493

IN THE

SUPREME COURT OF THE UNITED STATES,

No. 158.

DE LORMA BROOKS, APPELLANT,

vs.

WARRICK MARTIN.

APPEAL FROM DISTRICT COURT FOR DISTRICT OF WISCONSIN.

BRIEF FOR W. MARTIN.

This case has grown out of a partnership transaction, entered into in New Orleans, in June, 1847, between the complainant, the defendant and one Spafford C. Field.

Articles of Copartnership, record 33.

The business of the firm was to be transacted by Brooks and Field, Martin furnishing the necessary funds—and was to be confined to the purchase and sale of bounty land warrants and treasury scrip, issued, or to be issued, under the law of Congress of 11th February, 1847. Immediately after the execution of the articles of co-partnership, Brooks & Field commenced the business of buying warrants and scrip; had an office separate from that of Martin, who was then engaged in the banking business; and Mar-

tin had no connection with, or knowledge of, the business, except that he paid the checks drawn by Brooks & Field. After Martin had advanced money to purchase 327 warrants, the articles of co-partnership were, by agreement between the partners, so modified, that of the profits of all subsequent purchases said Martin was to have one-half, and said Brooks and said Field one-fourth each. Brooks left New Orleans the 15th July, and Field the 22d July, 1847, after which the business of the firm was transacted principally in the North-Western States by Brooks and Field, and Martin had no knowledge of, or connection with, it.

Before Brooks left New Orleans, Martin gave him a power of attorney, to represent him and control his share of said business, so as to enable Brooks, who was a brother-in-law and had before been a confidential clerk of Martin's, to control the business and superintend the operations of Field, who was comparatively a stranger to Martin; and it was understood between all the partners that Brooks should take, and be responsible for, the general control of the business; that the agents employed should report to said Brooks, and the said Brooks to Martin. Previous to the 28th June, 1848, the firm had become owners of over seven hundred warrants, which Brooks might and ought to have sold for cash. But Brooks, about September, 1847, intending to defraud Martin, and tie up the capital invested a long time, instead of directing his agents to sell warants, directed them to locate warrants upon Western lands, which was done by said agents. But Brooks concealed this fact from Martin till January, 1848, and then pretended to Martin that it had been done by agents, employed without his knowledge and against his wishes. While said Brooks was thus locating warrants, he pretended to Martin that warrants could not be sold, and continued to draw on Martin for money to defray the expenses of the business.

In June, 1848, Martin was in broken health and completely prostrated by business misfortunes. He was totally ignorant of the nature, amount, condition and value of the assets belonging to

the firm. Brooks, on the contrary, had, from the commencement of said business, been thoroughly conversant therewith, and well knew that the assets of the firm were then worth more than seventy-five thousand dollars, over all liabilities. Seeking an interview with Martin at Pittsburgh, in June, 1848, and fraudulently concealing from him all knowledge of the condition of the business and value of the assets, and falsely and fraudulently misrepresenting to Martin both the condition and value of the assets, Brooks induced Martin to transfer his interest to him for a nominal consideration.

Afterwards, in the Fall of 1848, Brooks employed one Gilman to pretend to represent the interest of Martin in said business, and proceeded with him to the residence of Field, and demanded a settlement of said business and a division of the assets of the firm, mainly upon the ground that Martin desired it. Thereupon a full settlement and division was had, and the assets were divided to the shares of the respective partners, and after that time Brooks remained in possession of the share set off to him, and also the share set off to Martin.

Martin remained in the South without visiting the North, ignorant of the fraud that Brooks had practiced upon him, till the Fall of 1856, at which time he paid Brooks a visit in the State of Wisconsin, and then and there made the discovery of said fraud.

This suit is brought to set aside the sale from Martin to Brooks, made in June, 1848, upon the ground that it was obtained by fraud, and it affirms the division and settlement made in the Fall of 1848, and seeks discovery of, and decree against, Brooks for Martin's share thus set off to him at the settlement and division in the Fall of 1848.

ABSTRACT OF BILL.

1. The parties are brothers-in-law.—Page 1 of Record.

2. In Summer of 1846 complainant was a Banker in Pittsburg, and in the fall of that year was attacked with disease of the heart, and in December went to New Orleans, and took defendant with him, and established a banking house in New Orleans, and defendant became his clerk. —Page 1 of Record.

ABSTRACT OF ANSWER.

1. Admitted.—Page 35 of Rec.

2. Admitted, except as to the cause of going to New Orleans. Went not on account of his health, but on account of financial difficulties at Pittsburgh.—Page 35 of Record.

EVIDENCE.

Deposition of W. S. COURTNEY, Esq., New York:

Said Martin, in the Summer of 1846, resided in Pittsburgh, Pennsylvania, in Wiley Street; at that time, and subsequently he was afflicted with nervous disease, which at times confined him to his house; his heart seemed to be affected through his nerves. I think it was in Fall of 1846 that he removed to New Orleans. As far as I can now recollect, *he had a double object in view;* firstly, to open business there with some of his friends, and secondly, *to try the influence of a change of climate on his health.* (181 of Record.)

Previous to said Martin's going to New Orleans, his disease at times affected him with great nervous debility, faintness and weakness. The paroxisms came on suddenly; his breathing would become short and difficult; he would turn pale; his heart would palpitate; and he would become dizzy and confused. At such times he would be compelled to lie down and keep himself perfectly quiet, and move his body as little, *and think as little, as possible.* (181 of Record.)

Deposition of IRA B. McVAY:

I know both the complainant and defendant. I have known Warrick Martin about twenty years, and DeLorma Brooks over ten years.

3*d Interrogatory.* Do you know, and if so state, where said Martin resided, and what was his business, in 1846? *Answer.* Warrick Martin, in the fore part of 1846, resided in the city of Pittsburgh, and was engaged in the Exchange and Banking business. Late in the Fall of that year he removed to New Orleans.

4th *Interrogatory.* Do you know, if so state, whether said Martin was, in the year 1846, afflicted by any, and if any, what disease; if yea, state what effect it produced upon the said Martin's capacity for doing business, if any? *Answer.* He was afflicted with a nervous affection. It at times rendered him incapable of attending actively to business.

5th *Interrogatory.* How intimately did you know said Martin in the year 1846? if at all, how frequently did you see him in that year, and what were your opportunities for knowing his condition of body and mind? *Answer.* I was well acquainted with him. I can't say how frequently, but I saw him very many times. My opportunities were good, for I was in his employment at that time.

6th *Interrogatory.* When did said Martin go to the city of New Orleans, if you know; and what was the reason why he went there? *Answer.* He went to New Orleans late in the Fall of 1846. I can't say the exact date. He went to New Orleans for the benefit of his health, and to improve his pecuniary condition.

On cross-examination, he says: "The symptoms of disease min-
"ifested by said Martin, were, as I have stated, a twitching of his
"limbs, depression of spirits, and a general nervous excitability.
"I can't state the dates of each manifestation. I cannot state dis-
"tinctly the dates and duration of all the paroxisms." (160 & 161 of Record.)

3. That when defendant became such clerk of complainant he was in straightened and embarrassed circumstances.—(1 of Record.	3. Denied; says that defendant then had 15 to $20,000 worth of property, and owed $1,400 or $1,500, and had as much due to him as he was owing.—35 of Rec.

EVIDENCE.

DEPOSITION of Benj. Way. (Record 170, 171.)
DEPOSITION of D. McDonald. (Record, 172.)
DEPOSITION of Benj. Prichard. (Record, 111 & 112.)
DEPOSITION of Robert Whitacre. (Record, 112 & 113.)
DEPOSITION of Warren Peters. (Record, 114.)
DEPOSITION of John Armstrong. (Record, 115.)
DEPOSITION of Joseph Thompson. (Record, 116.)

4. In June, 1847, defendant proposed to complainant to form co-partnership with defendant and S. C. Field, and that complainant objected; but defendant promised to look after the business, and pursuaded complainant into it.—Page 2 of Record.

4. Denied. Defendant says the complainant persuaded him into the business.—Pages 36 & 37 of Record.

EVIDENCE.

Testimony of S. C. Field proves the truth of the bill; says the proposition was made to Martin by himself and defendant. (349 of Record.)

5. Complainant, defendant and S. C. Field entered into articles of co-partnership, as follows, viz.: (Page 33 of Record.)

Exhibit No. 1.

"Memorandum of an agreement made and concluded this 10th day of June, 1847, by and between De Lorma Brooks, S. C. Field and Warrick Martin, all now of the city of New Orleans, Louisiana, relating to the purchase and sale of bounty land warrants and treasury scrip, that may have been or may be issued under the law of Congress of the 11th of Feb-

5. Admitted as to articles, but says "it is true that, *in terms*, said agreement related to the purchase and sale of 'bounty land warrants and treasury scrip,' though in fact it was not the intention nor understanding of the parties to it, at the time of its execution, that either land warrants or treasury scrip were to be purchased under said memorandum of agreement, or articles of partnership; but it was the intent, understanding and agreement of said complainant, said Field and defendant, at the time of executing said articles, to pur-

" ruary, 1847, entitled: An act, " to raise, for a limited time, an " additional military force, and " for other purposes.' "

The parties agree to form a limited partnership for the purposes above specified.

The purchases and sales to be conducted by said Brooks & Field under the name and style of Brooks & Field. The necessary funds to be furnished by said Martin, to be drawn on the checks of Brooks & Field, from Martin & Co., Bankers, of which firm said Warrick Martin is first partner; whenever required by Martin & Co., a note or notes is to be given by Brooks, Field & Co., at sixty days after date, for the amount that may have been drawn as above, adding thereto interest at the rate of 12 per cent. per annum, with the understanding that if the sales of scrip or warrants will not have supplied the necessary means for payment of said note or notes at maturity, said note or notes are to be renewed from time to time, and at each and every time of renewal interest to be added at the above rate; and whenever the funds realized shall enable the payment of said note or notes, or any of them, such payment is to be made. The interest thus added and paid is to be regarded as expenses.

The profits and losses of the operation, after payment of all necessary expenses and liabilities are to be shared and borne in equal parts and portions by each of the three parties above named, to-wit: Brooks, Field and Martin.

chase under them the unallowed *claims* of soldiers to bounty land or treasury scrip, under said law of Congress, of the 11th February, 1847, referred to in said articles, *and the terms 'bounty land warrants and treasury scrip,' were used in said articles of co-partnership in avoidance of the provisions of that law, by which the sale and purchase of said claims of soldiers was prohibited.*"—Pages 37 & 38 of Record.

In witness whereof, we have set our signatures and seals the day and year above written, in duplicate.

DE LORMA BROOKS, [Seal.]
S. C. FIELD, [Seal.]
WARRICK MARTIN, [Seal.]

Evidence of S. C. FIELD.

Question 7. For what purpose was said partnership formed, and to what business did it relate? *Answer.* It was formed for the purpose of buying and selling land warrants and treasury scrip, and related to that business. (349 of Record.)

Question 49. Was there anything said, at the time of entering into the articles of copartnership, or previously thereto, by any of said partners, to your knowledge, about evading, avoiding, or escaping any act of Congress; if so, what, and by whom? *Answer.* I have no remembrance of anything of the kind being said.

Question 50. At the time of entering into said copartnership, or previously thereto, was any other business contemplated or talked of by either of said partners, to your knowledge, than *buying* and *selling* land warrants and scrip; if so, what other business, and by whom talked of? *Answer.* It was the only business talked of, or contemplated, to my recollection. (353 of Record.)

See, also, cross-examination of S. C. Field.

Cross-Interrogatories 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123 & 124. (380, 381 & 382 of Record.)

To *Cross-Interrogatory* 123. "I have stated before that we made out the soldiers' application for his bounty, required him to elect whether he would have a land warrant or treasury scrip, as I think the law required the soldier, in making the application, so to elect; and this application, with his discharge, was designed to be forwarded to the pension department, for a warrant or scrip, as required. We took a contract and receipt from the soldier, at the time of making his application, by which he agreed to refund us the money in case his application failed, and to pay us a fee for doing the business; and we had a form of receipt which we expected

to use when we paid a soldier the balance due on his warrant. (381 & 382 of record.)

Interrogatory 104. State what the contract was you refer to in your answer? *Answer.* A contract for the sale of his warrant, when received. (382 of record.)

Was the Business Illegal?

It is contended that the business for which this copartnership was formed, was illegal; and that therefore the defendant cannot be called to an accounting of the profits of an illegal business.

To this we say:

1. The answer in this respect is not responsive to the bill, and is not established by proof, but disproved by the articles of copartnership, and by the testimony of S. C. Field, before quoted.

2. The business, as it was transacted, was not an illegal business. The act of Congress declared "all sales, mortgages, powers, or "other instruments of writing going to effect the title, or claim to "any such bounty right, made or executed prior to the issue of "such warrant or certificate, shall be null and void to all intents "and purposes whatsoever; nor shall such claim or bounty right "be in any wise affected by, or charged with, or subject to, the "payment of any debt or claim incurred by the soldier prior to the "issue of such certificate or warrant." But it did not declare, nor did any law of Congress declare it criminal to buy any such bounty right, or even forbid the buying of it. This statute is analogous to the statute of frauds, and avoids any attempted sale, but does not impose any penalty, nor render it illegal for a purchaser to trust the honor of the soldier to transfer his warrant when it should be so obtained.

3. But if it were conceded that the business was illegal, the conclusion contended for would not follow. Courts of justice will never interfere to enfore an illegal contract; nor sustain an action

that can only be sustained by enforcing and giving effect to an illegal agreement. But when a defendant is called to an account in a court of justice for *breach of trust*, he is never permitted to set up that the fund, as to which he is called to account, was created in some illegal way.

In *Barney* vs. *Saunders*, 16 How., 543, the court compelled a trustee to account for usurious interest, illegally taken by him on trust trust fund.

In *McBlair* vs. *Gibbes*, 17 How., 232, Mr. Justice NELSON reviews all the authorities upon this subject, and rests the opinion of the court in that case, upon the cases which he reviews, as follows:

"No obligation existed, except what arose from a sense of honor, "on the part of those deriving a benefit from the transaction out of "which it arose. Its value rested upon this ground, and this alone. "The demand was simply a debt of honor. But if the party who "might set up the illegality chooses to waive it, and pay the mon-"ey, he cannot afterwards reclaim it; and if, even, the money be "paid to a third person for the other party, such third person can-"not set up the illegality of the contract on which the payment "has been made, and withhold it for himself. In *Faikney* vs. *Re-"nous*, 4 Burr, 2069, where two persons were jointly concerned in "an illegal stock-jobbing business with a third, and a loss having "arisen, one of them paid the whole, and took a security from the "other for his share; the security was held to be valid as a new "contract, uninfected by the original transaction. And in *Petrie* "vs. *Hannay*, 3 T. R., 418, where one of the partners, under simi-"lar circumstances, paid the whole at the instance of the other, he "was allowed to recover for the proportionate share. These cases "are examined and approved in *Armstrong* vs. *Toler*, 11 Wh., 258.

"In *Tenant* vs. *Eliot*, 1 B. & P., 3, the defendant, a broker, ef-"fected an insurance for the plaintiff, which was illegal, being in "violation of the navigation laws; but on a loss happening, the "underwriters paid the money to the broker, who refused to pay it "over to the insured, setting up the illegality upon which an action

"for money had and received was brought. The plaintiff recov-
"ered, on the ground that the implied promise of the defendant,
"arising out of the receipt of the money for the plaintiff, was a new
"contract, not effected by the illegality of the original transaction.
"The same principle was applied and enforced in the case of *Far-*
"*mer* vs. *Russell*, 1 B. & P., 296."

See, also, *Thompson* vs. *Thompson*, 470;
Sharp vs. *Taylor*, 2 Ph. Ch. Rep., 801;
Tenant vs. *Elliott*, 1 B. &. P., 3, & cases cited;
Farmer vs. *Russell*, 1 B. & P., 296, & cases cit'd.

There is a clear distinction between a contract which contravenes the law, or is against public policy, and one which the statute declares void, if not entered into in a particular way, or at a particular time.

See *Rice* vs. *Peet*, 15 J., 503, where the plaintiff recovered back the amount of a note against a third person, delivered on parol agreement to convey lands, which agreement was *void.*

In *Lane* vs. *Shackford*, 5 N. H., 133, the court says: "But we
"have no doubt that in general, where a contract within the stat-
"ute of frauds has been in part executed by one party, there is a
"plain remedy for such party, to a certain extent, in a court of law,
"if the other party fraudulently refuse to execute the contract on
"his part. *If money has been paid, it may be recovered back. If*
"*labor has been performed, a compensation for it may be recovered.*
"These principles are recognized in the following cases: 1 Pic.,
"328, *Kidder* vs. *Hunt;* 5 Mass. Re., 133, *Sherburne* vs. *Fuller;*
"11 do. 342, *Boyd* vs. *Stone;* 2 Car & Payne, 91, *Maver* vs. *Pyne;*
"7 Cowen, 92, *Burlingame* vs. *Burlingame;* 5 John., 85, *Gillett,*
"vs. *Maynord;* 13 do., 365."

Shute vs. *Dorr*, 5 Cow., 205: a contract to labor for defendant more than one year, *held void;* but held the plaintiff was entitled to recover for his services under it, on *quantum meruit.*

See, also, *Richards* vs. *Allen*, 17 Maine, 296;

Lucy vs. *Bundy*, 9 N. H., 298;
Holbrook vs. *Armstrong*, 1 Fairf., 81;
Cabot vs. *Hastings*, 3 Pic., 95;
Little vs. *Martin*, 3 Wend., 219;
Freeport vs. *Burtol*, 3 Greenl., 340;
Lyler vs. *Eckhart*, 1 Binney, 378;
Billington vs. *Walsh*, 5 Binney, 129.

6. That after the execution of said articles, defendant and Field entered upon the business contemplated by said articles, and had purchased 327 warrants, when said articles were so modified by agreement of the partners, that of all warrants thereafter to be purchased, the said complainant should have one-half the profits, instead of one-third. (3 of Record.)

6. Denies that defendant and Field entered upon the business contemplated by the articles, but says they did enter upon the business contemplated by the partners as stated above; and that after the purchase of 327 claims, that said Martin and said Brooks combined together to deceive Field into a modification of said articles, in form as stated in the bill, but with a secret understanding between Martin & Brooks, that they, Martin & Brooks, should share equally in said profits, but said Field should be limited to one-fourth. (38 of Record.)

The answer is not responsive to the bill, and is not sustained by any proof as to the secret agreement between Martin & Brooks. On the contrary, the evidence that no such agreement existed, is furnished by the defendant under his own signature and seal:

1. Deposition of S. C. Field. (Record, 350.)

2. Division of property in Fall of 1848, an exhibit to S. C. Field's deposition, in the handwriting of Brooks, and signed by him. (455 to 480 of Record.)

3. The memorandum of settlement in the handwriting of Brooks, and signed by him, an exhibit to deposition of S. C. Field. (481 to 483 of Record.)

4. The lands and assets set aside to the share of Martin, in the

settlement, correspond with the modification of the articles stated in the bill. (Record, 481 to 483.)

While the answer in that part that is responsive, and which denies the doing of business as contemplated by the articles, is disproved, by every transaction, paper, document, letter and record introduced as evidence in this cause by either party. (See books 1 & 3 ~~in bill~~ for reference." on file

The parties contemplated the buying of nothing but warrants and scrip; and the whole evidence shows that they never pretended to buy anything but warrants and scrip.

DEPOSITION of S. C. Field. (349 Record.)

See card circulated in New Orleans. (453 Record.)

COPY OF AGREEMENTS made with the soldiers. (453 Record.)

COPY OF RECEIPT for money advanced to the soldiers. (453 of Record.)

COPY OF RECEIPT taken for balance paid. (454 Record.)

Whatever form was adopted by said firm for transacting its business, Martin was no party to it. The articles related only to the purchase of what could be purchased—that is, warrants; and with the mode of effecting purchases, Martin had nothing to do, nor is he shown to have known anything about what had been done, till about the time Brooks left New Orleans. The business of the firm was transacted in an office separate from the office of Martin, in New Orleans; and after Brooks & Field left New Orleans, they left agents in the office of the firm, and Martin never had anything to do with said business, except to pay the checks drawn, &c. See S. C. Field's deposition. (350 of Record.)

See, also, letter of defendant to—

Thos. H. Hampton, Sept. 27, 1847.	(420	of Record.)
S. C. Field, February 12, 1848.	433	" "
S. C. Field, August 12, 1847.	446	" "
S. N. Clary, " 18, 1847.	445	" "
S. C. Field, " 31, 1847.	444 & 445	"
Martin, July, 30, 1847.	269	" "

7. Complainant advanced to said firm, to purchase warrants, in all, in 1847 and 1848, about $55,000. (Record, p. 3 & 4.)	7. Denies that the funds were advanced by complainant, but says they were advanced by Martin & Co. (Record, p. 39.) "Defendant further states, that "about from 620 to 625 warrants "were also obtained by defend- "ant and said Field, on claims "purchased in New Orleans, as "hereinbefore stated, at an ag- "gregate cost, as near as defend- "ant is able to determine, of "about 60,000 dollars." (Rec- ord, p. 86.)

Answer says: "In further answer defendant denies that all or "any of the funds to carry on said business were advanced by com- "plainant." (43 of Record.)

Answer: "In further answer, defendant again denies that com- "plainant made any advance to said business." (62 of Record.)

Answer: "In further answer, defendant denies that he drew from "complainant any money." (77 of Record.)

Answer: "And denies that he drew on complainant's exhausted "or full credit for any pittance.

Answer: "Complainant did not make all or any of the advances "for carrying on said business." (86 of Record.)

These quotations are made to show that the defendant has not, by mistake, made this denial, but that he deliberately and intentionally makes it.

EVIDENCE.

1. The articles of co-partnership say: "The purchases and sales "to be conducted by said Brooks and Field, under the name and "style of Brooks & Field. The necessary funds to be furnished "by said Martin, to be drawn on the checks of Brooks & Field, "from Martin & Co., Bankers, of which firm said Warrick Martin "is first partner." (33 of Record.)

2. The deposition of S. C. Field states that the money was advanced by Martin, as agreed in said articles. (350 of Record.)

3. Answer of defendant. "The aggregate of the prices, as "agreed on with the soldiers and said Field respectively, of "these 340 claims, amounted to 24,048½ dollars, as footed by said "Brooks, Field & Co., of which $19,162½ dollars, together with "$1,106.50, expenses, had been paid by checks drawn on said Martin "& Co., leaving balance due to the soldiers, from whom these "claims were purchased, amounting to $4,886." (38 & 39 of Rec.)

4. Answer. "But defendant states that after the execution "of these articles as aforesaid, defendant and said Field en- "tered upon the business contemplated by the parties thereto, and "bought the claims of 327 soldiers, some for 40 acres and some for "160 acres of land, the aggregate prices of which, according to "the terms of purchase, amounted to $25,613, as at that, or some "subseqnent time, footed up by defendant and said Field. $18,231 "of this amount had been paid to the soldiers, and $312 of expense, "by checks drawn on said Martin & Co. (38 of Record.)

5. Answer of defendant. Defendant says, that it is true "that "early in January, 1847, complainant established an exchange and "banking house in New Orleans, under the name and style of "Martin & Co.; and further, that defendant was a clerk in said "banking house for five months or more." (35 of Record.)

6. Defendant's letter to S. C. Field, Sept. 8, 1847. "My chief "object in writing now is to say it will not be best to run too bare "of funds now. When I advised Mr. Martin yesterday that you "had drawn the money on his letters of credit before you received "his letter, he wrote you to vest the unexpended balance you might "have on hand in a sight bill on New Orleans, and remit to Martin "& Co." (413 & 414 of Record.)

7. That no one but Martin advanced the money for said business is evident from the fact that Brooks purchased of no one but Martin. (See Exhibit No. 3, to answer, Record 97.)

See also exhibit to deposition of S. C. Field, as follows (331 of Record):

"PITTSBURGH, June 28, 1848.

"Some time in the month of February last, I executed at New "Orleans, in the name of Brooks, Field & Co., nine several notes, "to the order of Warrick Martin, for five thousand dollars each. "I now take up and pay three of those notes, and hereby agree "and obligate myself to pay the others to the holders thereof, so "that said Warrick Martin shall not be held to pay them or any "of them. DE LORMA BROOKS."

See also the division lists, setting apart the lands to Martin, and memorandum of settlement, showing the assets were divided to Martin individually. (455 to 483 of Record.)

8. Defendant's answer says: "Defendant further states that he "had no knowledge of further determination of complainant to "make no more advances to said business." (42 of Record.)

But the most conclusive evidence of the insincerity and falsehood of the answer is found in the letters of the defendant, in evidence, showing what he understood himself about whether Martin or Martin & Co. were interested in said business.

Defendant's letter to Lake & Co., January 28, 1849: "First "then, Brooks & Field never, so far as I am advised, purchased "any land warrants, nor anything else, on joint account with Mar- "tin and Co. So far as Brooks and Field are apprised, the firm of "Brooks, Field & Co. comprised only Brooks, Field and Warrick "Martin. * * * * In our articles of partnership the name "only of Warrick Martin was added to those of Brooks & Field." (Record, 565 & 566.)

It matters not through whom, or by what means, Martin obtained the money, so that he complied with his contract and furnished it, which is admitted throughout by Brooks. Martin was to advance the money by paying the checks of Brooks & Field on Martin & Co., and he did it, as the answer shows.

9. That in July, 1857, defendant left New Orleans and went to Washington about said business, and said Field went West to sell warrants, and complainant had no means of learning anything about the business other than through said Brooks or said Field.—Page 4 of Record.

9. Read from the answer as a specimen of direct, precise and certain style of response employed by defendant in this cause, seems to be an admission.—Pages 39 to 46 of Record.

10. Your orator further states, that relying on the honor and integrity of the said defendant, and to enable him to control said Field and the said business for the interest of your orator and the said defendant and Field, your orator on or about the 15th day of July, A. D. 1847, gave said defendant before he left New Orleans, in the year 1847, as aforesaid, full power to represent your orator in all things pertaining to said business.—Page 4 of Record.)

10. Defendant, further answering, denies that complainant gave him, at any time after commencing said business, either orally or in writing, any other power or authority to represent complainant in anything pertaining to said business, or to enable defendant to control said Field or said business, than that conferred at and before the execution of said articles of copartnership, when defendant regarded himself invested with full power and authority to direct the management of said business in the manner he might deem best for the interest of said Brooks, Field & Co.—(Page 41 of Record.)

The partnership was formed June 10, 1847, by written articles; (see Exhibit No. 1 to the Bill.) Immediately after the business of the firm was commenced and prosecuted in New Orleans till the 15th July, 1847, when Brooks left for Washington, and on the 22d July, 1847, Field left for the North-West. Martin did nothing, and was to do nothing in the business, but furnish the money. Brooks & Field were to do the buying and selling. Martin remained in New Orleans, and after Brooks and Field left, Martin had no knowledge whatever of the business of the firm, or of the nature or amount of its assets, except as he derived it from Brooks.

It is important here to examine the relation which Brooks sustained to Martin and to Field. Brooks now finds it convenient to pretend that he had very little to do with the business of the firm, and knew very little about it; and to represent Spafford C. Field and his brothers as having had the chief control of the business.

Brooks, from the commencement of the business, was the agent of Martin as to Martin's interest in the business. The relation of partners, as a legal consequence, creates each party the agent of the other, so far as transacting the business of the firm is concerned; but aside from this legal relation, and in addition to it, there existed, *in fact*, and by express creation, this agency of Brooks for Martin. And it was further agreed by and between all the partners, that Brooks was to have an absolute control of the business of the firm, so as to control the operations of Field. And this dominion over the business, was not a barren right in Brooks, but was exercised on all occasions, and in every department of the business.

See defendant's answer:

1. "After all which, defendant, with hesitation and reluctance, "but yielding to the importunities of complainant, consented to "unite in the formation of said partnership, *upon the express verbal* "*agreement and condition, between complainant and defendant,* "*that defendant should have the ultimate control in the management* "*of the transactions of the copartnership, as he should deem best* "*for the general interests of the concern*, in the event of a diversity "of opinion among the partners, as to the management thereof." (31 of Record.)

2. "Defendant, further answering, denies that complainant gave "him, at any *time after commencing said business*, either orally or "in writing, *any other power or authority to represent complainant* "*in anything pertaining to said business*, or to enable defendant to "control said Field or said business, *than that conferred at and be-* "*fore the execution of said articles of copartnership, when defend-* "*ant regarded himself invested with full power and authority to*

"*direct the management of said business* in the manner he might "deem best for the general interest of said Brooks, Field & Co." (41 of Record.)

The defendant here admits the agency, but says the appointment took place at the time the articles were entered into. But as he denies the agency in other parts of his answer, we refer to other proof.

Deposition of John M. Gilman, answer to interrogatory 5, says: "I recollect further of Mr. Brooks saying to me that before the "purchase of the interest of Martin, he had full power and author- "ity from Martin, to act for him in all things pertaining to his in- "terest." (207 of Record.)

Deposition of S. C. Field, interrogatory 132, says: "The de- "fendant always, up to the filing of the complainant's bill, professed "to be the agent of the complainant, to control and manage the "interest of the complainant in said business." (362 & 716 of Record.)

The deposition of B. F. Field, says: "The defendant always "professed to be the agent of the complainant, to control and man- "age the interest of the complainant in said business." (243, 244, 261 & 262 of Record.)

The deposition of G. B. Field, answer to direct interrogatories 14 and 24, and cross-interrogatory 19, says, that the defendant, in the month of April, 1848, gave him definite orders not to write the complainant respecting said business, as what said G. B. Field had written the complainant had come very near preventing the defendant from making an *operation* with the complainant reapecting said business; and that there was no use in writing the complainant, "as he," the defendant, "had control of the interest of the "complainant." (224, 232 & 233 of Record.)

It was the understanding, by and between all the partners, that Brooks was to be the controlling partner; that he was to superin-

tend Field's operations; and that Brooks should demand accounts from Field and the agents of the firm; but that Martin was to look to Brooks only for accounts, and knowledge of the business. Field and the agents employed, were, by this agreement, in effect the agents of Brooks; and Brooks was to call them to account, and in his turn, account himself to Martin.

Defendant's answer says—

"But defendant denies that complainant had any authority or "right, under said articles, or by any agreement or understanding "of the parties of the firm of Brooks, Field & Co., either to order "that no more purchases should be made, or that proceeds of sales "should be remitted by said Field to complainant. *It had been ar-* "*ranged that the remittances and payments of proceeds of sales* "*should be made to defendant, and that defendant should make the* "*the payments to Martin and Co., or their order direct, or remit for* "*their credit, to Jos. S. Lake & Co., New York.*" (44 of Record.)

"And although defendant denies the right of complainant to "demand of defendant, at any time, and as often as complainant "might choose to do so, a detailed statement of *all the minute par-* "*ticulars in the operations of said business; yet defendant did,* "*whenever requested by complainant, and also whenever suitable op-* "*portunities were presented, furnish complainant with all the in-* "*formation in regard to said business, that defendant had it in his* "*power to give. But defendaut says that it is true that defendant,* "*(who regarded himself as entitled, by reason of the relation de-* "*fendant bore to said business, to demand and receive from said S.* "*C. Field, and from any and all the agents or persons in the employ-* "*ment of said Brooks, Field & Co.*, frequent, and detailed state- "ments of their several operations), was frequently disappointed," &c. (70 of Record.)

Mr. Brooks also finds it convenient to represent that George B. Field and B. F. Field were employed by Spafford C. Field, so that some way he is not responsible for what was done by the Fields. And he has all through this case sought to make them

the scape-goats to carry his sins to the wilderness. But the truth is, that from the beginning of the business, Spafford C. Field acted entirely under the direction of Brooks, and after the employment of George B. and B. F. Field, *by defendant's direction*, they also acted as clerks or subordinates of Brooks, and were instructed by him to receive orders from no one else.

Previous to Sept. 20, 1847, Gerge B. and B. F. Field had not been in the service of the firm *to locate or sell lands*. They were selling warrants or lands for themselves, for D. T. Murphy, of St. Louis, and Chubb & Schenck, of Washington. While thus engaged, S. C. Field, *by express direction of Brooks*, remitted 33 warrants to them *for sale*, but not for location.

Defendant's answer (39 & 40 of Record) says:

"Said Field had also spoken of a brother of his in terms of very "high commendation, whom he represented as every way qualified "to be entrusted with the disposition of warrants, and no objection "being made by complainant or defendant, it was expected that "said brother would be employed more or less in disposing of "warrants for Brooks, Field & Co., though *there was no such* "*definite arrangement.*"

Brooks' letter to S. C. Field, Sept. 4, 1847, says: (442 of Rec.)

"As soon as I get a neighborhood clear in Kentucky, I shall "forward you, that you may perfect and forward North, while the "weather is pleasant and prices good"—meaning would forward land warrants. Same day defendant wrote Geo. B. Field as follows: (270 of Record.)

"I hope you will succeed in finding all the places where warrants "can be cashed at high rates, and hope, further, that we shall soon "be able to supply any you may contract to dispose of."

Defendant's letter to S. C. Field, Sept. 16, 1847, says: (Record, 41[illegible]

tend Field's operations; and that Brooks should demand accounts from Field and the agents of the firm; but that Martin was to look to Brooks only for accounts, and knowledge of the business. Field and the agents employed, were, by this agreement, in effect the agents of Brooks; and Brooks was to call them to account, and in his turn, account himself to Martin.

Defendant's answer says—

"But defendant denies that complainant had any authority or "right, under said articles, or by any agreement or understanding "of the parties of the firm of Brooks, Field & Co., either to order "that no more purchases should be made, or that proceeds of sales "should be remitted by said Field to complainant. *It had been ar-* "*ranged that the remittances and payments of proceeds of sales* "*should be made to defendant, and that defendant should make the* "*the payments to Martin and Co., or their order direct, or remit for* "*their credit, to Jos. S. Lake & Co., New York.*" (44 of Record.)

"And although defendant denies the right of complainant to "demand of defendant, at any time, and as often as complainant "might choose to do so, a detailed statement of *all the minute par-* "*ticulars in the operations of said business; yet defendant did,* "*whenever requested by complainant, and also whenever suitable op-* "*portunities were presented, furnish complainant with all the in-* "*formation in regard to said business, that defendant had it in his* "*power to give. But defendaut says that it is true that defendant,* "*(who regarded himself as entitled, by reason of the relation de-* "*fendant bore to said business, to demand and receive from said S.* "*C. Field, and from any and all the agents or persons in the employ-* "*ment of said Brooks, Field & Co.*, frequent, and detailed state- "ments of their several operations), was frequently disappointed," &c. (70 of Record.)

Mr. Brooks also finds it convenient to represent that George B. Field and B. F. Field were employed by Spafford C. Field, so that some way he is not responsible for what was done by the Fields. And he has all through this case sought to make them

the scape-goats to carry his sins to the wilderness. But the truth is, that from the beginning of the business, Spafford C. Field acted entirely under the direction of Brooks, and after the employment of George B. and B. F. Field, *by defendant's direction*, they also acted as clerks or subordinates of Brooks, and were instructed by him to receive orders from no one else.

Previous to Sept. 20, 1847, Gerge B. and B. F. Field had not been in the service of the firm *to locate or sell lands.* They were selling warrants or lands for themselves, for D. T. Murphy, of St. Louis, and Chubb & Schenck, of Washington. While thus engaged, S. C. Field, *by express direction of Brooks*, remitted 33 warrants to them *for sale*, but not for location.

Defendant's answer (39 & 40 of Record) says:

"Said Field had also spoken of a brother of his in terms of very "high commendation, whom he represented as every way qualified "to be entrusted with the disposition of warrants, and no objection "being made by complainant or defendant, it was expected that "said brother would be employed more or less in disposing of "warrants for Brooks, Field & Co., though *there was no such* "*definite arrangement.*"

Brooks' letter to S. C. Field, Sept. 4, 1847, says: (442 of Rec.)

"As soon as I get a neighborhood clear in Kentucky, I shall "forward you, that you may perfect and forward North, while the "weather is pleasant and prices good"—meaning would forward land warrants. Same day defendant wrote Geo. B. Field as follows: (270 of Record.)

"I hope you will succeed in finding all the places where warrants "can be cashed at high rates, and hope, further, that we shall soon "be able to supply any you may contract to dispose of."

Defendant's letter to S. C. Field, Sept. 16, 1847, says: (Record, 41[illegible]

"I have received yours of the 13th, and have concluded to for-
" ward you to-morrow, by Adams & Co's Express, a parcel of Indi-
" ana, Illinois, &c., &c., warrants, and urge to start at once on a
" route leading te Wisconsin, and take such as find in such route,
" and proceed with the utmost dispatch to dispose of them and
" have the proceeds available as soon as possible."

"It is perhaps advisable *that you write at once to one of your*
" *brothers* to meet you on the way as early as possible, to assist you
" to make a wider track. *You can probably forward by mail to*
" *the brother remaining as fast as he can sell.*"

Defendant's letter to S. C. Field, Sept. 17, 1847, says: (417 of Record.)

"It may be well to write at once to one of your brothers to meet
" you at some point named, as early as practicable, to enable you
" to carry a wider track, and supply the remaining brother with
" warrants by mail as fast as he can dispose of them."

Defendant to S. C. Field, Sept. 22, 1847, says: (418 & 419 of Record.)

"I wrote him also that I would suggest to you what I have done
" above. *I think if we have luck we can keep George B. and B.*
" *F. busy about the land offices, in attending to sales* and locating, and
" two or three more examining and selecting, for at least two
" months."

Defendant to S. C. Field, Oct. 9, 1847: (426 &427 of Record.)

"This morning I read your letter again; am glad you concluded,
" as my second thought suggested, to leave Geo. B. and B. F. in
" the field to supply warrants to the needy."

These extracts clearly show that Geo. B. Field and B. F. Field were intrusted with the land warrants of the firm for sale, by

Brooks' express direction. Previous to the 20th September, 1847, no lands had been entered by or for the firm. About that time Brooks himself employed Geo. B. Field, and directed him to employ men under him, to enter lands with the land warrants of the firm.

Answer says: (50 of Record.)

"Defendant had met said Geo. B. Field in Washington, near the "last of Agust, 1847, *before any warrants had been issued on claims* "*of Brooks, Field & Co.*, when he manifested much seemingly "friendly anxiety about their affairs, and rendered defendant some "valuable assistance therein. Though said Geo. B. Field might "have been wanting in the fascinating smile, and other seductive "graces of S. C. Field, he appeared to defendant, to possess more "stability and point of character, that seemed to promise more "definite and efficient business habits. In consideration of all "which, and of the understanding aforesaid, defendant forwarded "to said Geo. B. Field, direct, a large number of warrants received "from the Pension Bureau for said Brooks, Field & Co., and many "warrants forwarded by defendant to said S. C. Field were, by the "latter, forwarded to said Geo. B. Field, to be disposed of."

Brooks to Geo. B. Field, Sept. 20, 1847, shows the first regular employment of G. B. Field, by Brooks, Field & Co., and that it was done by Brooks, and not by S. C. Field: (271 of Record.)

"I shall advise that he instruct you and your brother, B. F., to "employ two or three judicious, trusty individuals, acquainted "with the country, to examine the lands subject to entry, and be "able, at any time, on the arrival of any of our warrants, more "than a supply for the immediate demand, to locate the surplus on "the best selections subject to entry. For this purpose they should "visit the land, to be able to make the necessary affidavit that there "is no improvement or cultivation on it. When lands are once "located we will not allow them to come into competition with "warrants till the latter are all disposed of.

"As I presume you have some unsold yet, forwarded by S. C., I "enclose you warrants forwarded from New Orleans, which, for "safety of remittance, and to facilitate sales when desirable, are "in my individual name, and will be so located, though are owned "by, and held in trust for Brooks, Field & Co. *I wish you to* "*make an early and judicious location.* Current expenses must "be retained from proceeds of our sales of warrants, and *the rates* "*of your compensation we must settle when you meet Brooks &* "*Field.* The persons you employ you will engage on as good "terms as persons of the proper qualifications can be had for."

Brooks to S. C. Field, Sept. 22, 1847, says: (418 & 419 of Rec.)

"*We* should now have enough in Wisconsin to supply the de- "mand there, and we should have two or three industrious, pru- "dent, judicious, and trusty men constantly employed in examin- "ing and selecting the lands subject to private entry, so that when- "ever we have a warrant one or two more there that no person "wants, let it, without any delay, be located on the best land in "the market, and *when* located, let it not come into competition "with our other warrants till all are disposed of. I wrote to Geo. "B., two days ago, on this subject, and sent four warrants I had "received from New Orleans. For the purpose of greater safety "in remitting, and to facilitate sales, I had the assignments filled "with my name, stating to George B. explicitly, that they belonged "to, and were to be held in trust for, Brooks, Field & Co. I wrote "him also that I would suggest to you what I have done above. I "think, if we have luck, we can keep George B. and B. F. busy "about the land offices, in attending to sales and locating, and two "or three more examining and locating, for at least two months. "Locations should be made in the name of one individual, with a "clear and explicit expression and understanding that the lands "are held in trust for the Company. A regular and definite list of "all entries should be kept."

Knowing that locating warrants, instead of selling them, was a violation of the articles of agreement, and of his duty to Martin,

he tried to get S. C. Field to give the order which he had given, but failed.

These extracts show that Brooks employed the Field brothers, and that they were not employed by S. C. Field. The correspondence between Brooks and the Fields, from this time on through the whole existence of the firm, shows that Brooks gave constant and specific direction to the Fields upon every subject, and that they acted under his authority, and under that of no one else.

Brooks to Geo. B. Field, Sept. 30, 1847: (272 of Record.)

"On the 20th inst. I forwarded you, at Milwaukee, four warrants, "with *directions* to enter or locate. I now enclose nine, which you "will please sell, if in demand, *if not, locate at once on judicious* "*selections.* My letter of the 20th was somewhat in detail *on my* "*views of operating*, which you seem, in your letter, to meet. *I have* "*not time now to repeat.* I trust you received that and that its "suggestions have had attention."

Brooks to S. C. Field, Oct. 1, 1847, says:

"You seem not to have fully apprehended my views in relation "to location of warrants, *as I had directed Geo. B.*, or you would "not have been impressed with the difficulty and expense of as- "signing a warrant fully filled up with the name of the assignee. "I thought I said to you as I did to Geo. B., that when a *location* "*was made of our warrants I did not wish the land so located to be* "*brought into competition with our warrants till the latter were dis-* "*posed of.* I sent Geo. B. nine warrants, in blank, last night, "referring him to previous *instructions*, and expect to forward "more to-night." (423, 424, 425 & 426 of Record.)

Brooks to Geo. B. Field, Oct. 1, 1847: (272 of Record.)

"I have little to add to former *suggestions* as to the manner of "disposing of our warrants. I *want* all sold that the market re-

" *to render a good account of your stewardship.* I shall be very " anxious to hear from you, and for the purpose of meeting your " letters early, shall make all possible dispatch for Washington. " *In the meantime, see that everything is kept in its proper place,* " *and the gates properly closed.*" (278 & 279 of Record.)

Same to same, Jan. 29, 1848, says:

" I found on my arrival, your favor of the 20th ult. I am " pleased to learn the improvement in the health of your family, " *and the success of our surveys.* My progress has been gradual, " and success equal to my expectations. I now forward 13 40a and " 15 160a. Write at once, and full; retrospective and prospective. " *I want to hear fully as to prospects, to decide me as to further* " *purchases.*" (280 of Record.)

Same to same, Feb. 12, 1848, says:

" I hope, not without fear, that your anticipations from the open- " ing of navigation, may not be sadly disappointed, by the ravages " and influence of ship fever. *But, at any rate, location* is the only " reliable alternative during the suspension." (281 of Record.)

Same to same, Feb. 13, 1848, says:

" I forgot to say yesterday that long credits *are rather* to be " avoided than courted. I intended to say, also, that remittance " from you to Brooks & Field, or on their account, *are not to be* " *made to Martin & Co.*, Lake & Co., nor Rothchilds & Co., but to " Brooks & Field, or to De Lorma Brooks, for Brooks & Field. However, Mr. Martin does not expect it; as I told him, what he " should have known before, that the remittances must come through " me. *Reply at once, to New Lisbon, O.*" (282 of Record.)

Same to same, Feb. 26, 1848: (283 of Record.)

" In my reply to that letter, I think I omitted to say that I " *would not sell on a credit of over thirty days, at anything less than* $200. If your locations have been such as I have persuaded " myself they are, they ought to bring at least that much to the

" qr. after locating. Further, *I trust* you will not have neglected " to select a portion of the choice locations, as not in market. For " though we have every prospect of a peace soon, *yet the sales of* " *the lands we have located, can not be forced by a reduction in the* " *price.* I shall probably start for Wisconsin next month, and " shall be sorry to have you leave before I get there."

Same to same, February 28, 1848: (284 of Record.)

" I expect to leave this in 10 or 15 days, and shall probably make " but a short stay in Ohio, on my way to Wisconsin. You will " write me to Cincinnati."

Same to same, March 20, 1848: (285 of Record.)

" I expect to start in a few days for Wisconsin, and hope to find " everything *ship-shape and in proper order.* I am anxious for " the statement you promised, and trust yet to receive it before I " leave."

Same to same, April 8, 1848: (286 of Record.)

" I have just arrived on my way to Wisconsin, and found your " favors of March 4th and 10th, and regret to learn from the latter " that you regard my coming as rendering your full statement un- " necessary. I write this in the hope that the mail may out travel " me, and that you may have the statement prepared before my " arrival. I wish, also, to meet S. C. on my way, or at Sheboygan, " the latter much preferred. I regret, also, that any rumors or ap- " prehensions should have prevented you from locating all the war- " rants you could not sell to advantage."

The evidence on file shows, that during the existence of the firm, Brooks gave the same elaborate and specific orders and directions to S. C. Field, in all things, and he acted under and by Brooks' express directions.

DEPOSITION of S. C. Field, inter. 201. (348 to 410 of Record.)
DEPOSITION of S. C. Field. (713 to 728 of Record.)

Deposition of B. F Field. (237 to 266 of Record.)
Deposition of Geo. B. Field. (221 to 230 of Record.)

The evidence all shows that Geo. B. and B. F. Field never rendered any account to S. C. Field, but always to Brooks. Brooks never addressed the agents in the name of the firm, but in his individual name, and in all things represented himself to the Fields as the only one who was to direct their conduct, and receive accounts from them, and expressly and repeatedly directed them to hold no correspondence about the business, with any one but himself.

On 13th February, 1848, in reply to a letter of Geo. B. Field, for instructions as to whether he should remit money to Martin, defendant wrote him thus:

"I intended to say, also, that remittance from you to Brooks & "Field, or on their account, are not to be made to Martin & Co., "Lake & Co., nor Rothchilds & Co., but to Brooks & Field, or to "De Lorma Brooks, for Brooks & Field. However, Mr. Martin "does not expect it, as I told him what he should have known be- "fore, that the remittances must come through me." (282 of Record.)

Brooks to Geo. B. Field, June 19, 1848, says:

"I write by this mail to B. F., asking him to forward to *me* as "fast as possible, any means he may be able to collect for B. & F., "*and hope that he will not heed any suggestions conflicting with* "*this, as I supposed, settled arrangement.*" (289 of Record.)

Same to B. F. Field, June 19, 1848:

"I want you to remit to me as fast as possible, directed to this "place, till *further advised; and I do not wish any suggestion from* "*any other source to be allowed to interfere with this request.*" (290 of Record.)

Same to B. F. Field, June 21, 1848:

"I can hardly express to you how much I feel obliged to you for

" the soundness of judgment that dictated to you to remit directly " to me rather than to New York, or any other place, without my " direction. *I want all advice as well as remittances to pass through " myself.* A PLURALITY OF HEADS on one body deforms and weak- " ens. I am highly pleased with your discretion in the matter." (290 of Record.)

Same to Geo. B. Field, June 21, 1848:

" Nothing so much deforms and weakens a body as to give it a " plurality of HEADS. I should have been greatly embarrassed by " the remittance of the funds to N. York, and I am greatly obliged " to B. F. for the soundness of judgment that dictated to him to " remit directly to me." (291 of Record.)

The defendant's metaphor exactly expresses the fact. Brooks was the head, the controlling power, the presiding genius of the firm. All the evidence shows this; shows that no measure was initiated without his direction, no part of the business that was not thoroughly reported to and approved by him.

The defendant had not changed his opinion of his position in the firm when he drew his answer in this case.

Answer says:

" Defendant does not remember that he wrote Benj. F. Field on " the 19th of June, 1848, not to let the order of any one else inter- " fere with the orders given by defendant; but defendant admits " that if he did write said B. F. Field at that time, and if he had " any apprehensions that said B. F. Field *would allow the order* " of any one else to interfere with orders given by defendant in " regard to the affairs of Brooks, Field & Co., then defendant ad- " mits that he did so write to said B. F. Field." (76 of Record.)

See, also, the letters of George B. Field to defendant, showing that he looked only to Brooks for orders. (333 to 348 of Record.)

Geo. B. Field ceased to be defendant's agent, April 27, 1848, and B. F. Field, who had before acted under Geo. B. Field, was ap-

pointed by defendant, in George B. Field's place, and so continued up to the division, in the Fall of 1848.

See receipt, written by defendant, and signed by B. F. Field. (Book on file, 1.)

The answer says:

"In further answer, defendant states that he has no recollection "of, and therefore does not believe, that said Geo. B. Field, after the failure of said Lake & Co., *and after said Field had ceased to* "*have any visible connection with the business of Brooks, Field &* "*Co., and had retired to St. Louis*, did attempt officiously to inter- "fere with said business, by suggesting to B. F. Field the propriety "of remitting the avails of said warrant business to complainant "or to said Lake & Co. But if said Geo. B. Field was guilty of "such officious intermeddling and interference with the affairs of "Brooks, Field & Co., for the purpose of inducing a younger "brother to *violate his trust as an agent*, by remitting the funds of "said Brooks, Field & Co., to a failed broker or banker in New "Orleans, or to a failed and broken broking or banking concern in "New York, to pay the negotiable notes of said Brooks, Field & "Co., that had been negotiated and passed to other parties, then "defendant chooses to admit that he was both displeased and sur- "prised."

Answer: (76 of Record.)

"Defendant does not remember that he wrote Benj. F. Field on "the 19th of June, 1848, not to let the order of any one else inter- "fere with the orders given by defendant; but defendant admits "that if he did write said B. F. Field at that time, and if he had "any apprehensions that said B. F. Field would allow the order of "any one else to interfere with orders given by defendant, in re- "gard to the affairs of Brooks, Field & Co., then defendant admits "that he did so write to said B. F. Field." (76 of Record.)

To show that B. F. Field, after his appointment, acted under defendant's directions alone, see the following evidence:

The letters of defendant to B. F. Field. (288 to 300 of Record.)

The accounts rendered by B. F. Field to defendant before division. (301 to 322 of Record.)

We have thus traced the relation sustained, in fact, by Brooks to the other persons engaged in this business; have shown that from the commencement the defendant was to have, and that up to June 28, 1848, he in fact had had the absolute control of the business.

11. Your orator further states that on the 10th day of August, A. D. 1847, before your orator left New Orleans, owing to the business derangement consequent upon said epidemic and the disastrous speculations of that year, money was very scarce and credit critical in said New Orleans, and as your orator was compelled to be absent from his business, he felt bound to contract his business, and collect in his assets as fast as possible, and for these reasons he determined to make no more advances to said defendant and said Field, in said business, and before your orator left New Orleans, in August, 1847, your orator notified said Field, by letter, not to use certain letters of credit for fifteen thousand dollars, ($15,000) which your orator had before then given to said Field, and not to make more purchases of any kind, under said articles till your orator saw him, your orator stating in said letter that he wished to see a prospect of realizing from advances already made, before making further advances in said business.—Page 4 of Record.

10. In further answer to said bill, defendant states that HE KNOWS NOTHING OF THE OCCURRENCES IN NEW ORLEANS, as stated by complainant, after defendant left New Orleans, except as he learns of them from said bill.

In further answer, defendant states that he has no knowledge of, and does not believe the statement of complainant, that he felt bound, before he left New Orleans, in August, 1847, to contract his business and collect his assets as fast as possible, or that he determined to make no more advances to defendant and said Field in said business. Defend't learned through said Field, that before complainant left New Orleans, in August, 1847, complainant notified said Field, by letter, not to use certain letters of credit for $15,000, which defendant had before then given to said Field; but had no knowledge nor belief that complainant ordered said Field not to make any more purchases of any kind, under said articles, till complainant saw him. —Page 41 of Record.

EVIDENCE.

DEFENDANT'S LETTER to S. N. Clary. (445, Record.)
DEPOSITION of S. C. Field. (351, 353, Record.)
DEFENDANT'S LETTER to S. C. Field. (444, 445, Record.)
LETTER to Martin & Co. (273, Record.)
Same to same. (275, 276, Record.)

These letters and deposition show that Brooks did know of the yellow fever in New Orleans, and of the sickness of the clerk Martin left in charge of his business. He could not but have known of the financial crisis of 1847, for that is a matter of history.

11. Your orator further states, that after he went North, and about the last days of August, 1847, he met said defendant in the city of Washington, and your orator then frankly disclosed to him all the difficulties and embarrassments that surrounded your orator, on account of the said financial crisis, and informed said defendant of the order he, your orator, had given said Field before your orator left New Orleans, as hereinbefore stated, and owing to the confidential relations which had so long existed between the said defendant and your orator, he went into particulars of his condition, and fully acquainted said defendant with the order so given as aforesaid by your orator to said Field, and with all the particulars of your orator's pecuniary difficulties, as he could not said Field. That said defendant then and there entirely approved of and acquieseed in your orator's determination to make no more advances in said business, and in the order your orator had given said Field

11. Defendant's answer is found on pages 41, 42 & 43 of Record. See also, in conflict with these pages of the answer, page 35 of Record, letter to S. C. Field, (447,) Same to same, (413.)

as aforesaid, and assured your orator, that he, said defendant, would also give same order to said Field, and would devote his powers to realize means from said warrants and close up said business without delay.—Pages 4 & 5 of Record.

12. "That on the 7th day of September, A. D. 1847, your orator met said defendant in the said city of Pittsburgh, and said defendant then and there informed your orator, that before his said order to said Field, in relation to said letters of credit, had reached him, he had used the same; whereupon your orator immediately both wrote and telegraphed to said Field to remit to your orator the proceeds of said letters of credit, and in obedience to said instruction, the said Field remitted to New York for your orator five thousand dollars ($5,000) thereof; the amicable relations between your orator and the said Field not having then been broken up by the said defendant, as hereinafter stated." —Page[illegible] & 5 of Record.

12. Defendant says that it is true that when he met complainant in Pittsburgh, on the 7th of September, 1847, defendant informed complainant that the money had been drawn by said Field on said letters of credit and was so disposed of that it could not all be remitted to complainant, for defendant had been so advised, in effect, by said Field. Defendant denies having been instrumental in breaking up any amicable relations between complainant and said Field.—Page 42 of Record.

EVIDENCE.

1. To prove the allegations of the bill, see letter of defendant to S. C. Field, 8th September, 1847, and also telegraphic dispatch dated 7th September, 1847, to S. C. Field. (411, 412 & 413 of Record.)

2. To prove the answer false, and that Field had not before then, September 7, informed Brooks that the money had been used and could not be returned:

Defendant's letter to S. C. Field, September 8, 1847. (413 of Record.)

Defendant left Warshington for Pittsburgh, September 5, 1847 On the 4th September he wrote to S. C. Field, as follows:

"By the by, do not fail to make arrangements for the early and "safe transmission of proceeds to where they may be made avail- "able. *In connection with this, write me in your next how much "unappropriated funds you have that can be relied on for paying "our balances, as that is a matter that may assume some importance.*" (442 & 447 of Record.)

Sept. 15 he writes to S. C. Field: "You have not replied to my "inquiries or request as to the amount of available funds in your "reach for paying balances; I wish to know this, as also your plan "for making the proceeds of warrants sold in Wisconsin available." (416 of Record.)

The letters from defendant to Field, September 4th and 15th, show that defendant was entirely ignorant of the condition and amount of the partnership fund, in the hands of S. C. Field, up to 15th September. The letter of the 8th September clearly shows that at that time Field had not informed Brooks that the money *had been used*, for on the 8th he is advising Field *not to return* the money to Martin.

On that day Brooks knew that Field had drawn the money on Martin's letter of credit, but he did not know that Field had used the money. His letter of the 8th September was written upon the supposition that Field had not used said money, and might remit it, as Martin ordered, if he did not prevent it.

13. Your orator further states that at the time said articles of co-partnership were entered into, the said defendant and the said Field represented to your orator that from 60 to 90 days, or at most, four months, would be sufficient to settle up said business, and for your orator to realize his advances therein, and share of the profits of said business, and that this was a powerful inducement to your orator to enter into said articles, and that such time was ample for that purpose."—Page 5 of Record.

13. "In further answer to said bill of complaint, defendant says that it is not true that at the time said articles of co-partnership were entered into, defendant and said Field represented to said complainant that from 60 to 90 days, or at most, four months, would be sufficient time to settle up said business, and for complainant to realize his advances therein, and share of the profits of said business. Defendant states that he did not know, nor pretend to know, at that time, anything about the length of time that would be required to settle up said business; and defendant never made any representations about it, but said Field may have made such representations to complainant."—Pages 42 & 43 of Record.

EVIDENCE.

1. The articles of agreement show this: Notes were to be given on 60 days for all advances, and to be paid at maturity. (33 of Record.)

2. All that was realized from sales was to be applied to the payment of notes.

Deposition of S. C. Field: "*Question* 12. Was anything said by "said Brooks or you, in his presence, as to the length of time with- "in which said business could be closed up, and the profits real- "ized? &c. "*Answer.* It was said at first that some 60 days would "be required to close up the business. It was first thought it would "require about that time.

"*Question* 13. By whom and to whom was this said? *Answer.* "By myself and Mr. Brooks to Mr. Martin. We were all three "together." (349 & 350 of Record.)

Letter from defendant to S. C. Field, 12th August, 1847:

You did not write anything about the *notes that had been given*

to Martin & Co. before I left. Nor did you give me the time when the new notes were to mature. Write immediately on receipt of this, giving me your location, progress, &c., &c., &c., and these matters. (446 of Record.)

Letter from defendant to S. C. Field, Sept. 22, 1847:

I want you to send me, without delay, *a copy of our agreement, as I am not clear, without it, as what we ought to do in relation to our note that must be approaching maturity. I regret very much you had not taken and furnished me a minute of the notes you gave after I left. But let us strive to raise the money as early as possible to liquidate.* (418 & 419 of Record.)

Letter from defendant to G. B. Field, October 5th, 1847:

Our engagements in New Orleans require early remittances to a considerable amount. Please acknowledge receipt of all warrants forwarded you, and keep us fully posted up of the business and prospects. (273 of Record.)

Letter from defendant to S. C. Field, Nov. 1, 1847:

I hope soon to receive *remittance from Geo. B., as I feel it high time we were paying something.* I hope to meet you in Wisconsin in four or five weeks. Write me at Cincinnati and Indianapolis. (429 of Record.)

See also defendant's letter to G. B. Field, Nov. 14, 1847. (275 & 277 of Record.)

See also defendant's letter to S. C. Field, Nov. 21, 1847. (~~277~~ of Record.) 568, 569.

See also defendant's letter to G. B. Field, Dec. 25, 1847. (277 of Record.)

See also Exhibit No. 1, to defendant's answer. (96 of Record.)

See also deposition of S. C. Field: *Question* 44. "Did said "firm of Brooks & Field, before said Brooks left New Orleans in "1847, execute any notes for the capital advanced in said business; "if so, at what time and for what amount? *Answer.* I know they "executed certain notes, for the amount of $18,158 77, on 60 and "90 days, I think."

Question 45. "Did you, in the name of said firm, after Brooks "left New Orleans, give other notes for other advances to the cap-

" ital of said firm; if so, what amount and on what time? *Answer.* " I think I did give such notes, to the amount of $21,000, on four " months' time.

Question 46. " Why were said notes given on four months' time? " *Answer.* They were given on four months' time so as to prevent " or obviate the necessity of renewal.

Question 47. " Was it expected, when said notes were given, " that they could and would be paid at maturity? *Answer.* It was " expected that they would be paid at maturity." (352 of Record.)

Said business could and would have been closed up, and a large profit made, in four months, had it not been for entering lands with the warrants, and the other efforts of Brooks to prevent the closing of it.

14. Your orator further states, that all the funds to carry on said business, were advanced by your orator; that it was never contemplated at the time of entering into said articles, to purchase or enter lands with the funds of your orator; that land warrants and treasury scrip were cash articles in any money market in the United States, and were securities, upon which the holder or owner could at any time realize a loan of money, to nearly their real value in cash; that unimproved lands were not then convertible into money at anything like their real value, and were almost worthless as securities upon which to borrow money. —(Page 5 of Record.)

14. In further answer, defendant denies that all or any of the funds to carry on said business, were advanced by said complainant. *Defendant admits that it was not contemplated at the time of entering into said articles, to purchase or enter lands with the funds of the complainant.* And defendant states, that in the business of said Brooks, Field & Co., there was no provision made in their articles of copartnership, or in any agreement or understanding of the parties, for any particular mode or manner of disposing of warrants, either by direct sale or otherwise. Defendant also admits, that " land war- " rants and treasury scrip (if reg- " ularly assigned) were cash

" articles in any money market " in the United States, and were " securities, upon which the " holder or owner could at any " time realize a loan of money, " to nearly their real (or market) " value in cash, and that unim- " proved lands were not then " convertible into money at any- " thing like their value (estimat- " ed by their owners), and were " almost worthless as securities " upon which to borrow money." But defendant states, that there was a great difference in value and salability between warrants regularly assigned and transferred by the person to whom issued, and warrants without any such regular assignment and transfer; and a large portion of the warrants of said Brooks, Field & Co., were of this latter class. *Defendant further says, that at the time of entering into said articles of copartnership, there was no particular mode agreed upon for disposing of any warrants that might be obtained by the parties thereto, but it was understood and expected by them that such warrants would be disposed of in such manner as should seem most likely to be for the best advantage of said Brooks, Field & Co.*— (Page 43 of Record.)

EVIDENCE.

1. THE ARTICLES OF COPARTNERSHIP. (33 of Record.)

2. DEPOSITION of S. C. Field, question 48, as to entry of lands, " was not expected"; question 22, " did any of said partners, ex-

" cept Martin, to your knowledge, advance any money to carry on " said business?" Ans., "they did not." (352 to 353 of Record.)

LETTER of Martin to Brooks, March 15, 1848, made an exhibit by defendant:

" I do not believe in the policy of locating the lands. I fear this " will give the business a long tail. I don't want this; *the war-* " *rants were to be sold for cash, and not to be located*, and the lands " sold on a credit. I feel that in this matter great injustice has " been done me." (524 to 525 of Record.)

Though a large portion of the lands had been entered in the months of October, November, and December, 1847, and January, 1848, yet the answer admits that Martin had not been informed that lands had been entered until the last of January, 1848.

These extracts show that the understanding was, that the warrants were to be disposed of by sale; and that they were not to be used to enter lands to be held by the firm. A pretended copy of a letter from Martin to Lake, dated June 26, 1847 (583 of Record), is claimed by the defendant to be in conflict with the averments of the bill, and the admissions of the answer; but it is not so. The expression, " and either selling them to those who wish to buy land " or locating *the* land," means that the warrants were to be sold to actual settlers, or as was sometimes practiced, the lands which the settler wished to buy would be entered with the warrant for him, and then conveyed to the settler.

15. Your orator further shows, that before the said defendant had, as hereinbefore stated, interrupted the correspondence between your orator and said Field, your orator had written said Field, ordering him not to make any more purchases under said

15. The answer is, in substance, a denial.—(Pages 43 and 44 of Record.)

articles; and in one of said letters to said Field, in November, 1847, your orator requested him to remit the proceeds of all his sales of warrants to your orator, at New Orleans, or to his credit at New York; and your orator says that said defendant was acquainted with the contents and substance of said letters from your orator to said Field, especially with the one written as aforesaid, in November, A. D. 1847, in which your orator had ordered said Field to remit directly to your orator.—(Page 5 of Record.)

EVIDENCE.

LETTER of complainant to S. C. Field, August 7th, 1847. (411 & 412 of Record.)

MARTIN'S LETTER to S. C. Field, August 10, 1847. (412 of Record.)

MARTIN'S LETTER to S. C. Field, September 20, 1847. (413 of Record.)

MARTIN'S LETTER to S. C. Field, November 17, 1847. (412 of Record.)

16. Your orator further says, that the said defendant, immediately after leaving New Orleans, as stated hereinbefore, in 1847, designing and intending to cheat and defraud your orator, to deceive him as to the condition of said business, and the profits likely to accrue to your orator therefrom, endeavored by all the means in his power to make your orator believe that great difficul-

16. Defendant, in further answer, denies that he designed or intended to cheat or defraud complainant, or deceive him as to said business, or the profits likely to accrue therefrom; or that he did so cheat, defraud or deceive complainant. Defendant also denies that he endeavored to make complainant believe the difficulties to be encountered and overcome, in conducting said business, were

ties had to be encountered and overcome in conducting said business, and that therefore the prospect for profits therein was very slender.

And that among the false and fraudulent pretences and representations of the said defendant to your orator, to deceive him as to the profits to be expected in that behalf, was the following, viz:

The said defendant falsely and fraudulently pretended to your orator, *that he, the said defendant, could get no money from the sale of said warrants, and that it was necessary for said defendant to draw upon your orator, or his account in New York, to pay expenses and conduct said business; and the said defendant did, after leaving New Orleans, in* 1847, as hereinbefore stated, draw upon, realize from your orator, the following, viz:

The said defendant falsely and fraudulently represented to your orator, *that he, the said defendant, could get no money from the sale of said warrants, and that it was necessary, for said defendant, to draw upon your orator, or his accounts in New York, to pay expenses and conduct said business, and the said defendant did, after leaving New Orleans, in* 1847, as hereinbefore stated, draw upon and realize from your orator, the following sums, viz (page 484 of record,):

In August, 1847,	$300
In September, 1847,	$1,450
In October, 1847,	500
In November, 1847,	755
In January, 1848,	100

greater than defendant supposed them to be, or greater than they really were. Defendant represented the condition of said business, and the affairs of said Brooks, Field & Co., to complainant fairly, the favorable and unfavorable.

Defendant, further answering, again denies that he made any false or fraudulent pretences or representation to complainant about anything relating to said business.

In further answer to said bill, defendant denies that he made any pretence or representation to complainant that defendant could get no money from the sale of warrants, or that it was necessary for defendant to draw upon complainant, or upon his account anywhere.

It was unnecessary to make any pretence or representation. It was well known and understood that defendant would need money to defray expenses. It was well understood by complainant, when defendant left New Orleans in July, as aforesaid, that the business of the firm of Brooks, Field & Co., assigned to defendant, taking him to Washington, and most middle and southern, as well as some of the western states, in procuring the issue of warrants upon the claims purchased, and procuring the assignment of warrants, by the soldiers to whom issued, carried him to places better for buying than for selling warrants, and that the business would not supply him with the necessary funds; for which reason defendant had been

In February, 1848,..... 75
In June, 1848,..... 435
besides sundry sums paid by your orator to soldiers, in the south, on the checks of the said defendant and said Field.

Your orator further says, that the said defendant, on the 11th and 17th days of February, 1848, wrote your orator, that, unless said defendant got remittances of cash from said Field, said defendant would be compelled to draw on your orator's account with Lake & Co., of New York, for some funds to carry on said business, and on the 20th of March, 1848, said defendant wrote your orator that he said defendant had received no money from said Field; and that said Field had used money on his own account, extracted from said business, and was not able to pay it over, and on the 3rd day of April, 1848, said defendant again wrote to your orator, that wishing to start for Wisconsin, and having received no money from said Field, said defendant, to raise money for expenses, had been compelled to sell, what he called two quarter sections of his own land.—(Page 5 and 6 of Record.)

provided with the letter of credit with J. S. Lake & Co., hereinbefore mentioned. Defendant denies that he drew upon complainant for the sums alleged or for any other money. But, defendant states, that for some of said sums he drew upon said J. S. Lake & Co., on account of said Martin & Co., as follows, to-wit (page 43, 44 and 45 of Record):

Aug., '47,	on Lake & Co.		$	300
Sept.,	"	"	"	1,000
Oct.,	"	"	"	500
Nov.,	"	"	"	755
Jan., '48,	on Martin & Co.,			100
Feb.,	"	"	"	75

Fraudulent Pretences by Brooks.

We have now reached the charges of fraudulent conduct on the part of the defendnnt, which tended to deceive Martin about the true condition of this business.

The bill charges, that for the purpose of making Martin believe that the said business was unprofitable, Brooks represented that he

could get no money from it, and had to draw on Martin for expenses.

This the answer expressly denies.

1. To show that he did make such representations, see letter of defendant to Martin & Co., Feb, 11, 1848. (280 of Record.)

"If I should receive no further remittances from Wisconsin be-
"fore I leave this, *I shall be under the necessity of drawing on Messrs.*
"*L. & C. for some funds.*"

Letter of defendant to Martin & Co., Feb. 17, 1848: (280 of Record.)

"I have not yet retained anything to meet expected demands,
"and may be obliged to draw through Lake & Co." (281 of Rec.)

Letter of defendant to Lake & Co., Feb. 17, 1848:

"I have, as yet, retained nothing to meet current demands, *and*
"*may have to draw on you before I receive further remittances from*
"*Wisconsin.*"

Letter of defendant to Lake & Co., March 2, 1848: (564 of Rec.)

"I should have made an earlier reply to the inquiries in your
"favor of the 19th, but that my previous advices from the West
"had led me to expect a remittance ere this, that would render a
"letter to you unnecessary. My expectation has not yet been real-
"ized, and sundry letters from Post Masters, to whom I addressed in-
"quiries as to the location of sundry applicants, to whom we owe
"balances, now on my table, remind me continually of my need
"of funds. I have sent out checks on Messrs. Chubb & Schenk
"to some in Virginia, and must to-day remit some bank notes to
"some in North Carolina, to provide which, and to meet the checks
"by the time they return, *I have this day drawn on your house*
"*for* $400. That this will be sufficient to meet these and other
"contingencies, *depends upon the time the remittance is delayed.*"

Letter of defendant to Martin, April 3, 1848: (286 of Record.)

"*Not having received anything from Field since I wrote you, I*

" *had sold two quarter sections of my lands in Illinois, to a gen-*
" *tleman of New York, and forwarded the papers to Lake, with*
" *orders to have the money paid there, and drew on it for spending*
" *money.*"

Yet Brooks says, in the answer, he did not represent to Martin that it was necessary to draw.

2. To show that defendant did draw and realize, as stated in the bill, see account of defendant, rendered at settlement with Field: (484 & 485 of Record.)

De Lorma Brooks in account with Brooks, Field & Co., Dr.

1847.		
July,	To check on Martin & Co.....	$150 00
Aug.	" draft on J. S. Lake & Co.....	300 00
Sept.	" " " " " "	500 00
"	" four $100 scrip.....	400 00
"	" draft on J. S. Lake & Co.....	500 00
"	" six $25 scrip.....	150 00
Oct.	" draft on J. S. Lake & Co.....	500 00
"	" Rec'd of J. Creamer.....	55 00
Nov.	" draft on J. S. Lake & Co.....	55 00
"	" " " " " "	700 00

See also letter to Lake & Co., March 2, 1848, when defendant drew $400—letter quoted above. The drawing of the money, proves the allegation in the bill. This account, with all these items, is in the hand writing of Brooks.

3. Was it necessary to draw these sums? If not, we may presume that the defendant had a dishonest motive in it; as he only justifies them, in his letters quoted, upon the plea that they *were necessary.*

Defendant, in letter to S. C. Field, September 1, 1847, says: " To-day I have received sixteen warrants."

In letter to same, September 4, 1847, he says: "I have received "forty-two warrants, instead of one hundred that I was promised."

In letter to George B. Field, same date: "*I am very well pleased* "*with your account of the manner your brother, in Wisconsin, is* "*disposing of warrants.* I received but fifty this week."

In letter to S. C. Field, September 15, 1847: "I have received "only sixteen warrants yesterday and to-day."

In letter to George B. Field, September 20th, 1847: "The issue "of our warrants progresses gradually, and slower than I could "wish it, *still as fast as I expected.* Still we cannot and ought not "to complain, as it might be worse. We have received over two "hundred warrants, and expect near two hundred more this week." (270, 271, and 415, 442, of Record.)

In the month of September, 1847, Brooks sent to S. C. Field one hundred and eighty-four warrants, worth $31,000. (See Record, 449, 450, 451.)

These quotations show that defendant had received, in September alone—during which month he realized from Martin $1,550—two hundred warrants, and that these warrants were saleable, for he was pleased at the manner Field *was disposing of them.* These warrants were worth, according to the deposition of Keep, Cheney, Gray and others, $180 each. Worth in all $36,000.

In letter to S. C. Field, September, 22, 1847, he says: "I wrote "to Geo. B. two days ago on this subject, and sent four warrants I had received from New Orleans. For the purpose of greater safety in remitting and to facilitate sales, *I had the assignments filed with my name* stating to George B. explicitly, that they belonged to, and were to be held in trust for, Brooks, Field & Co." (418, 419, and 188, 189 of Record.)

In letter to George B. Field, September 30, 1847: "On the 20th "inst., I forwarded you, at Milwaukee, four warrants, with di-

" rections to enter or locate. I now enclose nine, which you will " please sell if in demand, if not, locate at once, on judicious selec- " tions. My letter of the 20th, was somewhat in detail on my views " of operating, which you seem in your letter to meet. I have not " time now to repeat." (272 of Record.)

In letter to George B. Field, October 1, 1847: "I should, per- " haps, hardly write to-night, but that I wish to advise you that " I sent you nine warrants, 160 acres each, last night. *I now en-* " *close, herewith, three others.* Please acknowledge receipt, giving " name and number.

" I have little to add to former suggestions as to the manner of " disposing of our warrants. I want all sold that the market " requires, and whenever you have any not required, locate, in my " name for Brooks, Field & Co., on the best selections." (272 of Record.)

These sixteen warrants, $180 each, worth $2,880. They were saleable, for Brooks orders them to be sold, or located. And Brooks could have sold them in any Eastern market, realizing more funds than the business required.

The depositions of all the witnesses, show that these warrants could all have been sold at good prices, and that the demand, at that time, was greater than the supply.

During the the month of October, 1847—in which he drew $500 —he had received from five hundred fifty to six hundred warrants. This is shown by his letter to S. C. Field, September 22, 1847; he says: " When I get through here, which I hope to do in the course " of three weeks, not that I expect to get all our cases through in " that time, but I expect, if not interrupted by some unexpected " occurrence, to get through the list, leaving some scattering cases " to work their way through as they can. It will be worth my " while to wait on them."

In his letter to S. C. Field, October 12, 1847; "Intended to "leave to-morrow, by way of Philadelphia, New York, home, "Ohio, Indiana, &c., &c. *About* 15 *per cent. of the case, yet be-* "*hind*, more than one-third of these condemned, the balance in "the mill, with fate uncertain." (428 of Record.)

The answer concedes six hundred and sixty-seven cases taken by defendant to Washington, fifteen per cent. off, leaves five hundred and sixty-seven warrants received on claim, besides those purchased.

These quotations show that the necessity for the drawings in September, 1847, was a mere pretence, and was intended to deceive.

In October, he sent George B. Field 17 warrants. In letter of Oct. 5, 1847, he sent 10, and in letter of 13th, sent 7 to be sold or located. These 17 warrants were worth $2,860. (272 & 273 of Record.)

In November, when he drew from Martin, $755, he sent to Geo. B. Field, for sale or location, 168 warrants, worth over $25,000. See his letters to Geo. B., remitting and referring to same, Nov. 1, 1847, Nov. 5, Nov. 7, Nov. 14, Nov. 15, Nov. 21 These warrants could have been sold by defendant in any eastern market for cash. (274, 275 & 276.)

On the 13th December, 1847, defendant left with G. B. Field, in Milwaukee, 122 warrants, worth $20,000. (Record 1051 & 1052.)

In December, 1847, defendant on his way to New Orleans, to see Martin, when the answer admits he fillled Martin's ear with dreadful accounts of said business, he bought 12 warrants, *paying cash;* for 3 he paid $140 each, for 9 he paid $125 each, in all, $1,645.

See his letter to Geo. B. Field, 17th Dec. (277 of Record.)

Letter to S. C. Field, Dec. 19. (431 of Record.)

Letter to Geo. B. Field, Dec. 31. (278 of Record.)

That in the month of December, in all, he sent and deliverd to Geo. B. Field, 155 warrants. (Exhibit 408, Record, 1051.)

See letters above, and letter to Geo. B. Field, Dec. 25. (277 of Record.)

In the letter of the 25th December, he sent 12 regularly assigned warrants, and in letter of Dec. 31, above, he sends 14 regularly assigned warrants, and 4 assigned by powers of attorney; and these regularly assigned warrants were sent for location, as is shown in the following letters:

Dec. 31, 1847, to Geo. B. Field. (278 of Record.)
Jan. 1, 1848, to S. C. Field. (432 of Record.)

In January, 1848, defendant was in New Orleans with complainant, and crucifying him daily with the dangers that attended the business, and drew from him $175 for expenses; yet while in New Orleans at this time, he received from W. D. McCright, $1,666 66, on account of Brooks, Field & Co., which he concealed from Martin, and remitted Geo. B. Field 35 warrants, worth $4,000, six of which he purchased while in New Orleans, paying therefor $210 cash. (279 of Record.)

Letter to Geo. B. Field, Jan. 6, 1848. (279 of Record.)
" " " " *Jan.* 29, 1848. (280 of Record.)

Account of defendant rendered at settlement with Field. (484 & 485 of Record.)

In February, 1848, just before drawing said $400, and during which month he wrote to Martin he would be compelled to draw to pay expenses, he sent Geo. B. Field 93 warrants for location, worth $15,000.

See defendant's letter to Geo. B. Field, Feb. 12. (281 of Record.)
" " " " " " 13. (282 of Record.)
" " " " " " 15. (282 of Record.)
" " " " " " 26. (283 of Record.)
" " " " " " 28. (284 of Record.)

Defendant wrote Martin, April 3, 1848, that he had sold his own land to raise money for expenses to go to Wisconsin, yet he had at

that time 12 warrants, worth $2,000, that he took with him to Wisconsin and had located. (1054 & 1955.)

See Deposition of B. F. Field. (243 of Record.)

From the 17th December, 1847, till the 22d April, 1848, Brooks sent George B. Field 172 warrants, worth $30,000. (See Record, 1052, 1053 & 1054.

These warrants could all have been sold for cash, at good prices.

Deposition of Judge KEEP:

"I purchased and located some land warrants in 1847 and "in 1848. The first I purchased, I should think, was as late "as September, 1847. The first I purchased I paid $180 "for 160 acre warrants. From November, 1847, to June, "1848, I think 160 acre warrants were worth $150 to $160. After "June, 1848, they declined to $125. 40 acre warrants during all "this time were worth from $45 to $50. When warrants first came "into the market, in September, 1847, the demand exceeded the "supply. (188 & 189 of Record.)

On cross examination:

"*At my office, in the city of Beloit,* 160 *acre warrants were* "*worth* $180 *on the* 1*st of November*, 1847*; and I would have been* "*glad to have paid cash down for* 50 *warrants at that time.* * * "* * * * * My knowledge of the location of land warrants in "Wisconsin in 1847 and in 1848 is confined to the locations made "by myself; and for the warrants I located, I paid cash exclusively. "I have no knowledge of land warrants located on credit or on "shares, except perhaps a half dozen located by me for Stafford C. "Field, in which I was to have an interest in the lands when sold." (189 of Record.)

Deposition of HAZEN CHENEY:

"I purchased and located land warrants in 1847 and 1848. The "first purchase was in November, 1847. I paid $175 for 160 acre

" warrants. Warrants for 160 acres were worth, during the follow-
" ing Winter and Spring, $150. In July, 1848, 160 acre warrants
" were sold for $145. They afterwards, during that Summer and
" Fall following, declined to $137 and $125 for 160 acre warrants.
" 40 acre warrants were nearly par during all the time above
" named. When warrants first came into the market in Septem-
" ber, 1847, the demand was as great as the supply, and even
" greater, and continued till some time about the middle of the
" Summer of 1848." (189 & 190 of Record.)

Cross-examined:

" *I purchased, in Beloit, land warrants in November*, 1847 *for*
" 160 *acres, and paid therefor* $175, *and could not get all I wanted*
" *at that time at that price.*" (196 of Record.) " *The warrants I*
" *located in* 1847 *and* 1848, *I purchased with cash*, at the price
" stated in my answer to direct interrogations." (190 of Record.)

Deposition of HAMILTON H. GRAY:

" *I was employed in the years* 1847 *and* 1848 *to locate land war*
" *rants belonging to Brooks & Field.*" * * * * * " *The*
" *land warrants located by me for Brooks & Field could have been*
" *sold for cash, at prices ranging from* $125 *to* $160 *for* 160 *acre*
" *warrants; and from* $45 *to* $48 *for* 40 *acre warrants.* (196, 197,
198 & 199 of Record.)

Defendant's letter to S. C. Field, August 12, 1847, he says:

" I find the price of warrants in Washington to be $135 for 160
" acres."

Defendant's letter to S. C. Field, September 4, 1847:

" Last night I received your favor of the 30th ult., and this
" morning one from your brother, George B., dated Buffalo, Sept.
" 1st. The burthen of his was to say that he had just received a
" letter from your brother, Benjamin F., by which he learned that
" B. F. *was selling our warrants sent from St. Louis at* $180 *for*
" 160 *acres, and* $48 *for* 40 *acres, and to ask me to write him week-*
" *ly.*" (446 & 442 of Report.)

Defendant's letter to S. C. Field, October 9, 1847:

"This morning I read your letter again; am glad you concluded " as my second thought suggested, to leave both George B. and B. " F. in the field to supply warrants to the needy, *and though I still* " *think it best to sell while we can get from* $160 *to* $182, *if we* " *should see fit even to re-invest. Yet I think the later news from* " *Mexico less favorable to peace and more favorable to warrants* " *than before.*" (426 & 427 of Record.)

Letter from defendant to Geo. B. Field, Dec. 17, 1847, from Chicago:

" I enclose you three warrants, straight assignments, *all that I* " *could find for sale, and therefore had to pay high*, $140, *and* " *should not have bought but for your remark at parting.*" (277 of Record.)

Letter from defendant to S. C. Field, Dec. 19, 1847:

" I was also induced, at Chicago, to buy three assigned warrants " at a tall price, $140, from Geo. B.'s suggestion at parting. These " were all I could find after much search, and that fact helped to " induce the purchase. I shan't go anywhere near that any more." (431 of Record.)

On his way to New Orleans, just after having received Martin's letter of Nov. 17, in which Martin says, " Matters look as though " we were going to have a very high money market this Winter. " I am therefore very anxious to get all my resources collected to- " gether as fast as possible. This soldier operation is a very large " one, *and you know I have* a great amount of money in it. I hope " you will urge on Mr. Field the necessity of paying over the " money to us, or to Jos. S. Lake & Co., as fast as realized on the " warrants. It has taken much longer than either you or I or Field " supposed to get through with this matter. This, I know, cannot " be avoided: I hope, however, that as fast as you *realize* you *will* " *send me the funds.*" (524 of Record.)

Brooks writes to Geo. B. Field, December 25th, 1847:

"I have this day purchased 9 warrants, which I obtained for "$125 each, and which are enclosed and forwarded to you here- "with, together with 9 others of the B. & F. cases." (277, 278 & 432 of Record.)

The exhibits on file with the depositions, show the following locations in each month:

		Warrants.	Acres.					
October,	1847,	30	4,800	(Books 1 & 2, on file.)				
November,	"	79	12,640	"	"	"		
December,	"	63	10,080	"	"	location & sale on file.		
January,	1848,	95	15,200	"	"	"	"	"
February,	"	45	7,200	"	"	"	"	"
March	"	87	15,520	"	"	"	"	"
April,	"	7	1,120	"	"	"	"	"
May,	"	22	4,180	"	"	"	"	"
June,	"	14	2,240	"	"	"	"	"
July,	"	10	1,600	"	"	"	"	"
August,	"	7	1,120	"	"	"	"	"
September,	"	10	1,600	"	"	"	"	"
		479	77,300					
10 war'nts were 40 ac's			1,200					
			76,100					
Value at $1 25 ₱ ac.			$95,125					

The testimony of B. F. Field, Spafford C. Field, and George B. Field, show that in all about 194 warrants were sold, receipts from which were about $23,000, the greater part thereof being 40 acre warrants. Their depositions also show that all of the warrants could have been sold for cash, and that they were not sold because defendant wished them located.

The warrants which Brooks could locate could have been located by any one else; and consequently could have been sold. But the depositions of S. C. Field and B. F. Field show that very little ef-

fort was made to sell warrants, except in the Northern part of Wisconsin.

These facts show that it was entirely unnecessary for defendant to draw these small sums, and that they were drawn to deceive the complainant.

17. Your orator further says, that in January, A. D. 1848, the said defendant visited your orator in New Orleans, and in conversation with your orator then and there, dealt at great length upon all the difficulties which he said attended said business, and the sorrows that he suffered, and the risk of losses on account of the imprudence and rascality of said Field; and then, for the first time, acquainted your orator with what, till then, he had not known: that the said Field, instead of selling the few warrants he represented he had sent to said Field, that said Field had, without the knowledge and consent of said defendant, and greatly to his mortification and regret, entered land with many of said warrants, and that, on account of these difficulties the said defendant was greatly discouraged, and but for the interest of your orator, would throw up and abandon everything for lost.—Page 6 of Record.

17. The answer to this allegation in the bill is found in the printed answer, covering 12 pages, from bottom of page 25 to bottom of page 36.

It admits the defendant's visit to New Orleans, in January, 1848, as charged; admits that he told Martin that difficulties attended said business, and then proceeds to set up that there were the following great difficulties and hazards attending the same, which he communicated to Martin:

1. Delay in obtaining warrants on account of the press of business at the department, &c.

2. The efforts of soldiers, by filing caveats, to prevent Brooks, Field & Co. from obtaining the warrants, and says: "This hazard was converted into actual loss to Brooks, Field & Co. IN A NUMBER OF CASES."

3. That assignments by power of attorney were void, and says, "and in some cases of Brooks, Field & Co., after the warrant had been received by the defendant from the Pension Bureau, by defendant forwarded to S. C. Field, it was reclaimed by the soldier and taken by attachment, as defendant was advised by said Field."—Pages 46 to 51, inclusive, of Record.

DELAY IN OBTAINING WARRANTS.

The bill charges that the defendant fraudulently and dishonestly alarmed the fears of Martin about the condition of the business, and that as late as this interview, in January, 1848, the defendant still represented these difficulties as then existing. After reciting the various difficulties above, the answer, speaking of the time, January, 1848, says: "All these difficulties—and it was unneces-"sary to exaggerate them—*still existed*," &c. Now, to show that if there was ever any delay in the issue of warrants, Brooks brought it about himself; and that at all events the difficulty was all over and ended before the interview in January, 1848, in which the answer admits that defendant repeated them to Martin as *then existing* difficulties, we call attention to the following

EVIDENCE.

1. The deposition of James M. Franciscus and S. C. Field, show that when applications were made through agents at Washington, the warrants were obtained in from three to four weeks, at cost of only $5 for each 160 acre warrant. (146 to 151 & 356 of Record.)

2. The letter of defendant to S. C. Field, Aug. 12, 1847, and the deposition of S. C. Field, show that all applications taken by Brooks & Field, except three, were retained by defendant in New Orleans until he went to Washington, on the 15th July; and the deposition of S. C. Field shows that said applications were retained by Brooks contrary to the former practice and to the wishes of said Field. The letter of defendant to Martin, July 30, 1847, and his letter to Lake, August 3, 1847, and to S. C. Field, August 12, 1847, show that after Brooks went to Washington with said applications, he retained them in his possession some ten days or two weeks before presenting any of them to the department. (Record, 356, 446, 269, 563 & 564.)

The letter of defendant to S. C. Field, August 12, 1847, and letter to same, August 31, 1847, show that, after depositing said applications with the Commissioner of Pensions, and before any warrants were issued on said applications, and without making any

1549

arrangement with the department for the issue of said warrants, said defendant left Washington, went to Ohio, intending to remain away an indefinite time, and did remain away twenty days. (446 of Record.)

5. Defendant's letters to S. C. Field, August 31st and Sept. 1st, show that, during said Brooks' absence from Washington, Geo. B. Field went to Washington and arranged with the department for the immediate issue of said warrants, and wrote and telegraphed to Brooks, hurrying him on to Washington. The letters of defendant to S. C. Field, of 4th, 8th, 10th and 13th September, show that said Brooks remained in Washington, when called there as aforesaid, only six or seven days, and then left for Ohio, and remained away from said business nine days. (434, 443, 442, 413 & 414 of Rec.)

7. Defendant's letters to Martin, July 30, August 4, and to S. C. Field, August 12, informed them that it would be a long time before any warrants would be issued; that the Commissioner of Pensions was unfair in the premises; and in his letter to Field he says, it will be *three to five, and, possibly, six months*, before *any* warrants will be issued. In his letter to Martin he says, "I have "reason to fear that a considerable time must elapse before our cases can be got through."

8. On the 24th August, Brooks received a dispatch, and on the 25th received Geo. B. Field's letter, hurrying him on to Washington. Speaking of the arrangement made by Geo. B. Field, he writes S. C. Field, August 31, 1847, (which proves the above dates) and in it Brooks says:

"He" (Geo. B. Field,) "had made some arrangements to for-"ward the issue of our warrants, the efficiency of which is to be "tested by the result. I hope his most sanguine expectations may "be realized; though I could wish a stronger foundation for my 'hopes to rest upon. They were promised to have been fed by "some forty or more warrants by this time, but I have just been

" advised that unexpected obstacles have presented themselves,
" which, it is hoped, may be surmounted. The nature of these ar-
" rangements is somewhat restrictive upon my actions, and leaves
" me little to do but listen, occasionally, to accounts of great achieve-
" ments in the way of surmounting difficulties. Until the efficiency
" or inefficiency of the present arrangement is more fully developed,
" I deem it prudent to economise my intercourse with the depart-
" ments."

Nevertheless, the proof shows that the day after the date of this letter he rececceived sixteen warrants; in three days afterwards fifty warrants; on the 20th Sept. he had received two hundred warrants, and expected two hundred more that week; and by the 12th Oct. he had received about five hundred and sixty warrants, and left Washington onthe 13th October.

Defendant's letter to S. C. Field, Sept. 1 (443 of Record).
" " G. B. Field, Sept. 4 (270 & 442 of Record).
" " G. B. Field, Sept. 20 (271 of Record).
" " S. C. Field, Oct. 12, prove this (428 of Rec.)

No advice was sent to Martin of that good news, that the warrants were about to issue, or had issued. On the contrary, in January, 1848, he told Martin the difficulty still existed.

The second difficulty, that Brooks admits that he represented to Martin in January, 1848, as still existing and depreciating the value of the assets of this firm, was the alleged filing of caveats by the soldiers, to prevent the delivery of the warrants to Brooks & Field.

1. The dishonesty of the representation in *January*, 1848, is sufficiently demonstrated by attending to the last head, where it is shown *that before this time* Brooks had received *all but about* 15 *per cent. of all the warrants* applied for. (See his letter to S. C. Field, Oct. 12, 1847, 428 of Record.)

The caveat had no effect but to prevent the delivery of the warrant. Why, therefore, was it necessary to dwell upon the great dangers to be expected from this source, when defendant *had already obtained nearly all the warrants*? The account, given in the answer, of the danger that was to be apprehended from caveats, is exceedingly pathetic. To show the difference between what defendant admits he told Martin, and what *he really thought about it*; and to show that he regarded the warrants not yet (January, 1848) obtained, as of very little importance, we quote defendant's letter to S. C. Field, September 22, 1847, where he says: "When I get "through here, which I hope to do in the course of three weeks, "*not that I expect to get all our cases through in that time*, but I ex- "pect, if not interrupted by some unexpected occurrence, to get "through the list, leaving some *scattering* cases to work their way "through as they can. *It will not be worth my while to wait on* "*them*. And from his letter to S. C. Field, Oct. 12, 1847, where he says: "I intended to leave to-morrow by way of Philadelphia, "New York, home, Ohio, Indiana, &c., &c. *About* 15 *per cent. of* "*the cases yet behind, more than one-third of these condemned, the* "*balance in the mill, with fate uncertain.*" (418, 419, 420, & 428 of Record.)

Contrast, now, the language of these letters in September and October, with the language used to Martin in January following. In October he regarded the few "scattering cases," as not worth his stay in Washington to attend to; yet in the January following, with Martin, the caveat difficulty was of great magnitude.

2. There is no evidence upon this part of the case to sustain the answer; it is not responsive to the bill; and the proof shows that but one warrant was withheld from Brooks & Field by a caveat; and in that case the soldier repaid the money.

See DEPOSITION of S. C. Field. (355, 356 & 357 of Record.)

ACCOUNT of defendant rendered at settlement with Field. (484 & 485 of Record.)

LETTER of defendant to S. C. Field, Oct. 9, 1847. (426 & 427 of Record.)

Speaking of this subject (the proof, be it remembered, showing but *one case*), the defendant, in his strain of exaggerated grief, says, in January, 1848: "This hazard was converted into *actual loss* to " Brooks, Field & Co., *in a number of cases.* (47 of Record.)

The Depositions of G. B. Field, B. F. Field, and S. C. Field, who sold and located the warrants, show only one case lost, and in that case, the name of the man was Kramer, who paid back the money. (485 of Record.)

3. But the caveat difficulty was a mere pretence, and Brooks knew it. To show this, see his letter to S. C. Field, September 16, 1847. (416 & 417 of Record.)

"I have heard an intimation that the Commissioner is preparing " a circular for second applicants, that may possibly take ground " on the side of justice and integrity. If they prove such as I have " been induced to hope, and I come across one, *I will forward it* " *to you.*"

Defendant's letter to S. C. Field, September 18, 1847, he says: " I have obtained and enclose a blank circular spoken of in a for- " mer letter." (447 of Record.)

This circular is on page 448 of Record, and in connection with Brooks' letters, shows that Brooks did not apprehend any difficulty in regard to obtaining warrants.

The third great difficulty the answer admits that Brooks laid before Martin, in January, 1848, as depreciating the value of the assets of the firm, was the alleged fact that many of the warrants had been assigned by illegal powers of attorney. We are not here

inquiring into their validity, as question of law; but the question is, did Brooks communicate to Martin his real sentiments and opinions, or did he endeavor to alarm Martin with difficulties which he did *not believe existed?*

EVIDENCE.

LETTER of defendant to S. N. Clarey, Aug. 18, 1847:

"In relation to the warrants you may receive, I wish to urge the "importance of forwarding all to me, except the Louisville cases, "which you will forward at once to Mr. Field without delay, as "soon as assigned, those you expect to get assigned there, *and the "others without waiting for the assignments, as I have the powers of "attorney.*" (445 of Record.)

On his way to New Orleans, defendant writes from Memphis to Geo. B. Field, January, 6th, 1848: "Since I left you at Milwaukee "I have forwarded you from Chicago, December, 17, three war- "rants; from St. Louis, Dec. 26, twelve warrants; from same, Dec. "31, eighteen warrants, and now enclose you herewith seven; five "unassigned. *For these, S. C. will forward the power of attorney "for assigning.*" (279 of Record.)

LETTER of defendant to Geo. B. Field, February 15, 1848:

"I have learned that a number of Patents have issued, and "among them several that were assigned by powers of attorney." (282 of Record.)

These letters prove, that on his way to New Orleans, he had no doubt about powers of attorney. In New Orleans, the *answer admits* he dwelt at great length upon the difficulty attendant upon powers of attorney. The last letter shows that on his arrival at Washington he found that no objection was made, either at the land office or by the department, on account of warrants thus assigned.

The depositions of S. C. Field and of B. F. Field, (242 & 354 of Record) say, that in December, 1847, when they met Brooks in Milwaukee, on his way to New Orleans, no such difficulty existed with warrants assigned by power of attorney; and that Brooks had no fear of such warrants, and did not wish any more money spent in getting assignments; and the subsequent letters of Brooks to G. B. Field and S. C. Field confirms the said depositions.

In further evidence of Brooks fraudulent conduct toward Martin, contrast his letters from Washington in February, 1848, to Martin, (280, 281 and 284 of Record,) with the letters written at the same time to George B. Field, and S. C. Field, (281, 282, 283, 284 and 433 of Record). To Martin, he writes in the sadest strains, and he says he shall have to draw for further funds to carry on the business; and gives him no hope of relief from the dangers he had dwelt upon while in New Orleans. While his letters to Field, show that patents were being issued, without objection on locations, where powers of attorney had been used; and, during this visit to Washington, he sends to Field, to be located, ninety-three warrants, which he might have sold in New York, at that time, for at least $15,000.

No one but George B. Field ever anticipated any difficulty from this cause, and Brooks was vexed at said Field for his fears, and said they had no proper foundation; and all the Fields, including George B., state, in their deposition, that no warrants were ever lost to Brooks & Field from that cause. But we shall treat this power of attorney matter more at length, when we come to the sale, on the 28th of June, 1848.

19. And your orator further says, that said defendant learned of the failure of said Lake & Co., at New Lisbon, Ohio, on the 3d day of April, A. D. 1848, and that he at once wrote to your orator that he, said defendant, was going to Wisconsin in the business of said land warrants, and that to get money to pay his expenses he had been compelled to sell two tracts of his own land; that afterwards, on his way to Wisconsin, he passed through the city of St. Louis, and there learned of your orator's suspension, but did not learn whether your orator had hopelessly failed and was ruined, or only suspended, and that afterwards, about the 16th day of April, 1848, the said defendant wrote to said Martin & Co., in New Orleans, requesting to be informed of the *realized* and the *anticipated* effects of the failure of said Lake & Co., upon said Martin & Co., and that the said defendant afterward, in May, 1848, visited New Orleans, to learn the true state of the case with your orartor, for himself.—Page 8 of Record.

19. Does not recollect when he heard of failure of Lake & Co. Don't recollect writing Martin, April 3. But recollects he learned of their failure in Spring of 1848, before going to Wisconsin. Defendant "has no definite recollection of having written to Martin & Co., April 16;" but, "thinks it likly he did." Admits his visit to New Orleans in May, 1848. ~~Page 54 and 55 of~~ Record. 52, 53.

Not knowing whether the allegations in the bill are admitted or denied by the answer, we cite:

EVIDENCE.

DEFENDANT'S LETTER to Martin, April 3, 1848. (286 of Record.)

DEFENDANT'S LETTER, April 16, 1848, to Martin & Co. (286 of Record.)

20. And your orator further says, that the said defendant, in New Orleans in May, A. D. 1848, learned that your orator was hopelessly ruined and broken, unless your orator should realize something from said land warrant business; and that your orator was entirely unmanned and prostrated, in body and mind, by the troubles in his business, and that his health was so far impaired, and his mind so depressed that he was not able to take care of himself and his own business, and that one, James M. Franciscas, had accompanied your orator to the Northern States, to take care of him. That said defendant, from a long and intimate acquaintance with your orator, well knew the effect that excitement or business trouble always produced upon your orator, aggravating the symptoms of said disease, and depressing his spirits, and unfitting him for the transaction of business.—Page 8 of Record.

20. Denied, except that defendant went to New Orleans in May, 1848.—Page 54 of Record.

EVIDENCE.

Deposition of JAMES M. FRANCISCUS.

Interrogatory 4.—"Were you in the office of Martin & Co. in April, 1848, and was said Martin there, when news was received of the failure of Joseph S. Lake & Co.? if yea, state whether said news produced any and what effect upon said Martin; and do you know the condition of said Martin's health, subsequent to that time? and if so, state how long a time, and what that health was, and what was your means of knowing his health.

Answer.—I was in his banking house in April, 1848; he was there; he fainted sitting in his chair when he received the news of Joseph S. Lake & Co's. failure. Yes, for several days and nights

he was completely prostrated, and had to be kept up by frequent use of stimulants. I was with him for two months after, in New York city, and his condition was one of prostration of mind and body. He was kept up entirely by stimulants.

Interrogatory 5.—"Did you accompany said Martin to his home, and then to the city of New York, after said news of said failure was received?" &c.

Answer.—"I did, both to his house and to New York city. We left his house, I believe, in April, 1848, for New York city, remained about two months with him. His condition was one of great nervons excitement, and prostration of mind and body." (147 of Record.)

21. Your orator further says, that said defendant, on his way to New Orleans, on his visit there last stated, wrote your orator, then in New York, requesting an early interview, and subsequently, on the 2d of June, A. D. 1848, he wrote a letter to Lake & Co., at New York, knowing that your orator was still in New York, and would probably see the same, expressing his, said defendant's, anxious desire to see your orator, and asking said Lake & Co., so to inform your orator, and defendant's great desire to close up and liquidate the liabilities of Brooks, Fteld & Co., and stating, also, that a careful examination of the premises left him no ground to hope to pay said liabilities in one year; but expressing, also, that if he and your orator could meet, he, said defendant, hoped an arrangement might be made between him and your orator, which would tend to hasten the liquidation of said liabilities. That said letter, as soon as received by said Lake & Co., was handed by them to your orator. (8 of Record.)

21. Answer. (54 & 55 of Record.)

EVIDENCE.

DEFENDANT'S LETTER to Martin. (287 of Record.)
DEFENDANT'S LETTER to Lake & Co. (288 of Record.)

23. Your orator further says, that the said defendant, in the month of September, 1847, then, well knowing your orator's pecuniary condition, his great want of money, and that he must suffer great trouble, if not absolute ruin, unless he could realize some money out of said land warrant business; did, in violation of said articles of agreement, and in fraud of your orator, expressly order and direct Spafford C. Field, George B. Field and Benjamin F. Field—two brothers of said Spafford, to enter lands with warrants bought with your orator's money and to keep and employ three or four good trusty men, beside themselves, selecting lands to be thus entered, and to keep said lands, when so entered, out of the market, and not to offer any of the same for sale, and that when said lands were sold they should be sold on credit; and your orator says, that these instructions and orders, of the said defendant, were obeyed and carried out, all of which actings and orderings, of the said defendant, were unknown to your orator, and in fraud of his rights, and a great breach of trust and confidence in said defendant; and that your orator never learned or knew that any lands had been entered with said warrants until afterwards, in January, 1848, when the said defendant

23. The answer of the defendant is on pages 50, 51, 73, 74, 78, 88, 91 and 92 of Record, and should be read, as a happy specimen of evasion.

made the same known to your orator, and stated that it had been done by said S. C. Field without his, said defendant's, knowledge and against his wishes and orders; which false and deceptive conduct of the said defendant was designed to, and did, deceive your orator as to the condition of said business, the operations of the said defendant, and greatly dishearten your orator about the said business.

Your orator is informed, and believes, and therefore says, that that in January, February and the early part of June, A. D. 1848, when the said defendant was pretending to your orater, as aforesaid, that he had to sell his own land to pay his expenses in said business, he had obtained, as aforesaid, hundreds of said warrants, which he might and ought to have sold for cash; and that he had thousands of dollars in money derived from said business; *and that he was, during those months, constantly sending said warrants to Wisconsin to enter land with, in violation of his duty, of said article of agreement, and your orator's orders; and hiring five or six men to look up land for location;* and that the money forced out of your orator, as before stated, in those months, was used, by said defendant, to injure, defraud, deceive, and ruin your orator, and to violate the articles of agreement under which it was furnished by your orator; and that all these fraudulent actings, drawings of money, and locating of warrants, by said defendant, were intended to, and did, deceive and blind

your orator, and enable said defendant to accomplish his fraudulent purchase of said interest of your orator, as herein stated. (14 of Record.)

In the bill *he is positively charged with having ordered the Fields to enter lands.* This the defendant ought to have admitted or denied. He has done neither, but labors at great length to insinuate the belief that he did not so direct. He says:

"*It was supposed*, that the issue of patents," &c., would "render it nearly impracticable for the soldier to reclaim and defeat "the title thus acquired." (50 of Record.)

"*It was supposed*"! Who supposed so? Again, he says:

"As reasons for entering lands with warrants, *it was represented* "*by said Field brothers, or some of them*, that there was much enquiry," &c. (50 & 51 of Record.)

Again:

"The foregoing, and perhaps other considerations, induced the "said Field brothers, *as defendant believes, to have lands entered*," &c., "*as promising, in the opinion of said Fields*, the best prospect of profitable and speedy returns," &c. (51 of Record.)

"And although *such entries* MAY HAVE *been commenced without the knowledge or consent of defendant*," &c. (51 Record.)

Now, all this was intended to create the belief that the Fields commenced entering lands without his knowledge, yet the defendant had not, up to the end of page 51 of Record, concluded to swear so. Each page, however, of the answer tends more and more nearly to this; and defendant apparently gained strength as he coquetted with falsehood, and he says:

"Defendant says, *that he does not recollect* that he ordered said "Field brothers to enter lands," &c. (73 of Record.)

Yet qualifies his statement thus:

"*But defendant denies that such order*, IF DEFENDANT

" MADE SUCH, or approval, was in violation," &c. (73 of Record.)

Again, defendant says:

" But although the suggestions to enter lands with the warrants " of Brooks, Field & Co. *came first* from the Field brothers, and " although," &c. (73 of Record.)

And again:

" And the defendant states that, *although he acquiesced in the en-* " *try of lands upon the suggestion of said Field brothers*, and for " reasons," &c. (73 of Record.)

But at length, having summoned resolution for a last and final effort, he comes more positively to the charge, and says:

" He has no recollection or belief that he ever, as *intending to* " *initiate a measure, ordered any person to enter lands* with land " warrants, bought or procured under said articles of agreement. " *After it had* been suggested and perhaps determined on by said " Fields to enter lands," &c., " *defendant says he assented to it* for " the reasons given," &c. (91 of Record.)

On page 73 of Record, defendant, speaking of the representations made by himself to Martin, in January, 1848, says:

" Defendant may have stated to complainant that said Field had " entered lands, *without orders from defendant*," *&c.*

There is an air of insincerity, and manifest reluctance in the manner in which defendant treats this subject, sufficient to deprive his answer of credit; and we might safely leave the subject here, with the remark that a statement in the bill, which might have been denied in two lines, but which defendant has devoted pages to the denial of; and at last, after repeated efforts, brought himself only to deny it on belief, must be true. But, fortunately, the evidence is at hand to prove the answer false in its *spirit* and *letter*;

false in its *substantive statements*, and false in the *reasons* which are given for such statements.

EVIDENCE.

1. THE ARTICLES OF COPARTNERSHIP. (33 of Record.)

2. THE ANSWER says:

"Defendant *admits* that it was not contemplated, *at the time of* "*entering into said articles*, to purchase or *enter land* with the funds "of complainant." (43 of Record.)

Answer admits—

"That unimproved lands were not then convertible into money "at anything like their value (estimated by their owners), AND "WERE ALMOST USELESS AS SECURITIES UPON WHICH TO BORROW "MONEY." (43 of Record.)

3. DEPOSITION of S. C. Field:

"*Question* 48. At the time of entering into said copartnership, "or previously thereto, was anything said by either partner, to "your knowledge, about entering land with land warrants? *Ans.* "There was not." (352 & 353 of Record.)

4. THE LETTER of Martin to defendant, 15th March, 1848, *made an exhibit by the defendant:*

"*I do not believe in the policy of locating the lands. I fear this* "*will give the business a long tail; I don't want this; it is a viola-* "*tion of our contract. The warrants were to be sold for cash, and* "*not to be located and sold on a credit. I feel that in this matter* "*great injustice has been done me.*" (524 of Record.)

The above quotations, from the evidence, show that the articles of co-partnership did not authorize the entry of lands; and therefore, whoever entered them did it wrongfully. It is not pretended, nor insinuated by defendant in his answer, nor is there a word of evidence in the case to show that Martin ever consented to the en-

try of lands; on the contrary, the only evidence as to Martin's views of this subject is furnished by defendant himself, in Martin's letter last above quoted. The following quotation from the answer shows that Martin was first informed of the entry of lands in January, 1848, nearly four months after the entry of lands had been commenced, and after a great part of the warrants had been located:

"Defendant denies *that when he informed complainant in January, 1848, that lands had been entered with warrants of Brooks, Field & Co.*, defendant stated to complainant that it had been done by S. C. Field against his orders. Defendant may have stated to complainant that said Field had entered lands WITHOUT ORDERS FROM DEFANDANT, but not against such orders" (73 of Record).

Now to the question: Did the Fields commence the entry of lands, "*without orders from the defendant*," in which the defendant "*acquiesced*;" or did the defendant "*initiate the measure*," and order the Fields to enter lands?

EVIDENCE.

Deposition of S. C. FIELD:

54th Qustion. Did you enter lands, or cause them to be entered with land warrants of Brooks & Field, in Southern Wisconsin, in the Winter of 1847, or Spring of 1848? *Answer.* I did.

55th Question. By whose direction or advice, if any one? Ans. By the advice, and with the approbation, of *defendant, Brooks.* (Record, 353.)

Deposition of B. F. FIELD:

Geo. B. Field and myself, in 1847 and 1848, located some land for Brooks, Field & Co.; my impression is that we commenced locating land for them about the 5th of October, 1847, under direction of Mr. Brooks. We located the lands generally under the

direction, and with an understanding, with Mr. Brooks." (Record, 240, 255.)

Deposition of GEO. B. FIELD:

5th Question. Did you, or said B. F. Field, or others by your orders, ever enter lands for Baooks & Field, with land warrants owned by them; if so state fully, &c.? *Answer.* We both entered land with warrants owned by Brooks, Field & Co., by order of De Lorma Brooks and S. C. Field. We entered a large quantity; cannot say precisely how much, owing to the fact of the books of account being in Wisconsin. They were located in the latter part of the year 1847, and the whole of the year 1848. The said locations were made by authority of Brooks & Field, and were generally located in the name of B. F. Field. (224 & 225 of Record.)

Letter of defendant to Geo. B. Field, Sept. 20, 1847, enclosing the first warrants, four, that were sent by defendant to Wisconsin (271 of Record):

"WASHINGTON CITY, Sept. 20, 1847.

"GEO. B. FIELD, Esq.

"*Dear Sir:*—I have as yet heard nothing from you since your "favor from Buffalo, to which I replied. The issue of our warrants "progresses gradually and slower than I could wish, and still as "fast as I expected. I could not but foresee that many embarrassing "occurrences were to be expected. Still we cannot and ought not "to complain, as it might be much worse. We have received "something over two hundred warrants, and expect near two hun-"dred more this week. I have sent some eighteen or twenty to S. "C., and am preparing a package of something like a hundred, to "start him from Cincinnati, west, through Indiana and Illinois, to "Wisconsin, as fast as possible. He will be able to supply you "with warrants faster than they can be disposed of to advantage.

"I shall advise that he instruct you and your brother B. F. to "employ two or three judicious, trusty individuals, acquainted

" with the country, to examine the lands subject to entry, and be " able, at any time on the arrival of any of our warrants more " than a supply for the immediate demand, to locate the surplus on " the best selections subject to entry. For this purpose, they should " visit the land to be able to make the necessary affidavit that " there is no improvement or cultivation on it. When lands are " once located we will not allow them to come into competition " with our warrants till the latter are all disposed of.

" As I presume you have some unsold yet, forwarded by S. C., I " enclose four warrants, forwarded from New Orleans, which, for " safety of remittance, and to facilitate sales when desirable, are in " my individual name, and will be so located, though are owned by, " and will be held in trust for, Brooks, Field & Co. I wish you to " make an early and judicious location. Current expenses must " be retained from proceeds of our sales of warrants, and the rate " of your compensation me must settle when you meet Brooks & " Field. *The persons you employ you will engage on as good terms* " *as persons of the proper qualifications can be had for.*

" The warrants are John Smart, No. 344, Robert McClintock, " No. 408, John A. Crossland, No. 409, and Daniel G. Kennedy, " No. 1052. Please reply at once and at large.

" Yours very truly,

" DE LORMA BROOKS."

Defendant's letter to S. C. Field, Sept. 22, 1847:

" We should now have enough in Wisconsin to supply the de- " mand there, and we should have two or three industrious, pru- " dent, judicious, and trusty men constantly employed in examining " and selecting the best lands subject to private entry, so that when- " ever we have a warrant or two, or more, there, that no person " wants, let it, without any delay, be located on the best land in " the market, and when located, let it not come into competition " with our other warrants till all are disposed of. I wrote to Geo. " B. two days ago on this subject, and sent four warrants I had re-

" ceived from New Orleans. For the purpose of greater safety in " remitting, and to facilitate sales, I had the assignments filled with " my name, stating to Geo. B. explicitly that they belonged to, and " were to be held in trust for, Brooks, Field & Co.

" *I wrote him also that I WOULD SUGGEST TO YOU what* " *I had done above. I think, if we have luck, we can keep Geo. B.* " *and B. F. busy about the land offices, in attending to sales and* " *locating, and two or three more examining and selecting, for at* " *least two months.*

" Locations should be made in the name of one individual, with " a clear and explicit expression and understanding that the lands " are held in trust for the Company. A regular and definite list of " all entries should be kept." (418, 419 & 420 of Record.)

Defendant's letter to S. C. Field, Oct. 1, 1847:

" *You seem not to have fully apprehended my views in relation* " *to location of warrants as I had DIRECTED Geo. B., or you* " *would not have been impressed with the difficulty and expense of* " *assigning a warrant fully filled up with the name of the assignee.* " *I thought I said to you, as I did to Geo. B., that when a location* " *was made of our warrants, I did not wish the land so located to* " *be brought into competition with our warrants till the latter were* " *disposed of.* I supposed that we should keep them constantly " supplied with warrants, assigned in blank, to suit any demand " for warrants; and when a temporary, as you may call it, location " of a 160 is to be made for immediate sub-division, to meet the " wants of small purchasers, beyond the supply of 40 acre war- " rants, your views of having them located in the name of Frank, " or some one on the ground, are correct; beyond that, my views " would be better met by locations in our own individual names. " But I reiterate that I can see no advantage to be derived from " our locations, made as such, to come into competition with our " warrants. My views are, to supply the market, as far as practic- " able, with warrants, even at a less price than they now command; " and if the state of our engagements and finances will admit, we

" may purchase any quantity more. But whenever we have war-
" rants on hand not wanted in the market, let them at once be lo-
" cated judiciously, and, I repeat, in one of our own names, to be
" held in trust for the Company." (424, 425 & 426 of Record.)

Defendant's letter to Geo. B. Field, Sept. 30, 1847:

" On the 20th inst. I forwarded you, at Milwaukee, four warrants,
" with directions to enter or locate. I now enclose nine, which
" you will please sell if in demand, if not, locate at once on judi-
" cious selections. *My letter of the 20th was somewhat in detail*
" *on my views of operating, which you seem, in your letter to meet.*
" I have not time now to repeat. I trust you received *that* and
" that its suggestions have had attention. I send S. C. 122 war-
" rants to-night. Progress tedious, but as great as we could well
" have expected. I may write you soon again. Write often." (272
of Record.)

Defendant's letter to Geo. B. Field, Oct. 1, 1847:

" I should perhaps hardly write to-night, but that I wish to ad-
" vise you that I sent you nine warrants, 160 acres each, last night.
" I now enclose herewith three others. Please acknowledge re-
" ceipt, giving name and number.

" *I have little to add to former suggestions as to the manner of*
" *disposing of our warrants.* I want all sold that the market re-
" quires, and whenever you have any not required, locate in my
" name for Brooks, Field & Co., on the best selections. *As I ad-*
" *vised in a former letter, accompanying four warrants first sent,*
" keep a sufficient number of trusty, shrewd and judicious men
" employed steadily, examining the vacant lands, that they may
" be prepared to point out and make the proper affidavits as to set-
" tlements and improvements, whenever a warrant is on hand not
" wanted by buyers. Let them take into view quality, locality,
" roads, county seats, water privileges, &c., &c." (272 of Record.)

Defendant's letter to Geo. B. Field, Oct. 5, 1847:

" On the 20th Sept. I enclosed you 4 warrants, on the 30th,

" 9, and on the 1st inst., 3, and I now enclose ten more. *I have* " *nothing to add to previous requests and instructions.* I hope you " will be able to find purchasers at fair prices *for a good share* of " your warrants. *But whenever a surplus is on hand, locate as be-* " *fore advised.*" (273 of Record.)

Defendant's letter to Geo. B. Field, Oct. 13, 1843:

" Just on the point of leaving this place, I enclose you 7 addi- " tional warrants, referring to previous SUGGESTIONS for your guide."

Defendant's letter to Geo. B. Field, Nov. 1, 1847:

" Your favor of the 4th ult, reached me by last mail from Wash- " ington city. I am very well pleased with your very vivid and " cheering picture of the prospects ahead, and with the work you " seem to be doing. I regret, however, your misapprehension of " my INSTRUCTION relative to the warrants I sent you assigned to " myself. *I wished them located in the name with which they* " *were filled, and for this no power was necessary.* I hope a sec- " ond reading has given you this view of the matter before this time." (274 of Record.)

Defendant's letter to Geo. B. Field, Nov. 14, 1847:

" I now forward you two packages, 9 warrants in each. Sell " David C. Whiting and James R. Stall without delay to some one " who will soon locate. Sell or locate all as fast as possible, and " have a pile of money by the time I meet you." (275 of Record.)

Defendant's letter to same, Nov. 21, 1847.

" I am still very well pleased with your account of progress and " prospects in Wisconsin. A little further thought and considera- " tion have brought me to the conclusion that it is not best to lo- " cate at present in the name of our firm or its partners, and I have " been thinking it quite possible that it may be thought advisable " to have it located in the name of the father-in-law of S. C., with " the precaution you speak of having taken with the locations by

"B. F. This gentleman, S. C.'s father-in-law, lives in the Terri-
"tory, I believe, and it may, in some instances, be preferable not
"to have Brooks or Field appear associated with the location."
(275 & 276 of Record.)

Defendant's letter to S. C. Field, January 1, 1848:

"I have bought and transmitted to George B. 9 warrants. I
"want you to look closely to matters, get to see the whole lay of
"the land and quality of soil, &c." (432 of Record.)

We have followed the defendant's correspondence from September 20, 1847, to his visit to Martin in January, 1848. The bill charges positively that defendant then told Martin that the Fields had entered lands without defendant's knowledge, and against his orders. The answer says, speaking of what he told Martin, in January, 1848: "*Defendant may have stated to com-*
"*plainant that said Field had entered lands* WITHOUT ORDERS FROM DEFENDANT, but not against such orders." (73 of Record.)

Now, the testimony of B. F. Field is that the entries commenced on the 5th October. This letter of defendant, 20th Sept., 1847, does not allude to any letter received from Geo. B. Field, or any one else, but takes up and treats the whole subject as an original question, and points out in full detail the manner in which the business was to be conducted. His views are evidently disapproved by S. C. Field, for Brooks writes him Oct. 1st: "You seem not
"to have fully apprehended my views in relation to location of
"warrants," &c., and then defendant again enters upon the subject with repeated detail and directions.

The letter of defendant to George B. Field, Sept. 20, 1847, shows many important facts.

1. The defendant had received no letter from Geo. B. Field since his letter of Sept. 1, 1847. That letter is thus described by defendant in his letter to S. C. Field, Sept. 4, 1847:

"Last night I received your favor of the 30th ult., and this

" morning one from your brother, George B., dated Buffalo, Sept. " 1st. *The burthen of his was to say that he had just received a* " *letter from your brother, Benjamin F., by which he learned that* " *B. F. was selling our warrants sent from St. Louis at* $180 *for* " 160 *acres, and* $48 *for* 40 *acres, and to ask me to write him week-* " *ly.* I have written him to-day, enclosing yours that I had " opened." 442 of Record.)

Here was nothing about entering lands, and in this letter, of the 20th of September, Brooks writes George B. Fields, " I shall ad- " vise that he " (speaking of S. C. Field) " instruct you and your " brother, B. F., to employ two or three judicious, trusty individuals, " acquainted with the country, to examine the lands subject to entry, " and be able at any time, on arrival of any of our warrants, more " than a supply for the *immediate* demand, to locate," etc. This shows that he had not received from S. C. Field any suggestion upon this subject; and all the evidence shows that no entry had then been made.

Deposition of B. F. FIELD:

" *Question.*—Before receiving any instructions from Mr. Brooks " to locate any warrants, did you or your brother George B., write " to him advising him that it was best to locate warrants? *An-* " *swer.—I did not;* and don't know that my brother did."

2. The instruction in this letter was, " on the arrival of any of our warrants, more than a supply for the *immediate* demand, locate the surplus," etc. If this advise was heeded, of course no warrants would be kept to meet any demand.

After defendant left New Orleans, in January, 1848, and after he had learned Martin's views upon the subject of entering lands, he writes George B. Field, February, 12, 1848:

" I hope, not without fear, that your anticipations from the open- " ing of navigation may not be disappointed *by the ravages and in-* " *fluence of the ship fever. But any rate location is the only relia-* " *ble alternative during the suspension.*" (281 of Record.)

LETTER to S. C. Field, same date:

"The object of your visit to Madison may be one of much im-
"portance to us, and hope you will have succeeded to the extent
"of your desire. I am glad that you find no difficulty in entering
"such land as may be valuable. Beware of *long* credits." (433 of Record.)

LETTER to George B. Field, April 8, 1848:

"*I regret also* that any rumors or apprehensions *should have*
"*prevented you from locating all the warrants you could not sell to*
"*advantage.*" (286 of Record.)

The case shows that Brooks controlled the business, and was to direct, and did direct, the Fields therein. Therefore, a suggestion from any of them as to the entry of lands, should have been overruled, and would have been, if it had not met his approbation. A letter from George B. Field, dated the 18th of September, 1847, is paraded by Brooks, to justify the statement of his answer, that Field originated the idea of entering lands. But this letter was not received by Brooks till the 30th of September, 1847, whereas he had given the orders to have the lands entered on the 20th of September, and had written S. C. Field, fully, as to what he had done on the 22d of Septemder. (272, 333, 418, 419 and 420 of Record.)

Having shown that defendant himself, and no one else, is chargable with the entry of lands, and that the answer is utterly untrue upon this point; let us now examine the reasons why he says *it was believed* best for the interest of Brooks & Field, that the lands should be entered.

The first reason given by defendant to justify the entry of lands, is: "And defendant further says that similar expectations
"of high prices to those which induced the concentration of warrants
"of Brooks, Field & Co., in Wisconsin, induced the accumulation
"of other warrants there until the supply exceeded the demand,
"first reducing the price, and then leaving at times many warrants
"without ready purchasers at any saving price." (Record, 50 & 51, defendant's answer.)

1. Now this letter of 20th Sept., in which defendant first ordered lands entered, and the deposition of B. F. Field, show that at this time defendants had received no letters from the Fields in Wisconsin. The only letter that defendant had received was from Geo. B. Field, 1st Sept., from Buffalo, and that spoke flatteringly of the prospects for the sale of warrants. (Record, 270 & 442.)

See, also letter of defendant to Geo. B. Field, Sept. 4, 1847. (Record, 270.)

2. Brooks had before this sent no warrants to Wisconsin for sale.

See defendant's letter to G. B. Field, Oct. 1. (272 & 273.)

Deposition of B. F. Field. (Record, 231 to 236.

3. In this letter of 20th Sept., he says he had sent S. C. Field only 18 or 20 warrants; and his letters to S. C. Field show he had sent enly 18, and they were sent to procure direct assignments thereof.

See S. C. Field's deposition, anwer to question 36.

S. C. Field deposes, and so does B. F. Field, that said S. C. Field had, up to, and including, the 20th Sept., sent only about 30 warrants to Wisconsin to be sold, not to be located. (239 & 352 of Record.)

The Letter of G. B. Field to Brooks, Sept. 1, the only one Brooks had received, stated warrants were in demand, and those sent by S. C. Field were selling at $180 and $182 each for 160 acre warrants. The letter of the 18th Sept. says they had sold certain warrants at $180 to $184. (333 of Record.)

4. The depositions of witnesses show very clearly that in September, when defendant positively ordered the entry of lands, the market was not supplied.

Deposition of H. H. GRAY: (199 of Record.)

"*The land warrants located by me for said Brooks & Field could* "*have been sold for cash at prices ranging from* $125 *to* $160 *for* "160 *acre warrants, and from* $45 *to* $48 *for* 40 *acre warrants.*"

Deposition of JOHN M. KEEP. (188 & 189 of Record.)

"When the warrants *first came into the market, in Sept.*, 1847, "*the demand exceeded the supply.* * * * * * At my office "in Beloit, 160 acre warrants were worth $180 *on the first day of*

"*November*, 1847, *and I would have been glad to have paid cash* "*down for* 50 *warrants at that time.*"

Deposition of HAZEN CHENEY: (189 & 190 of Record.)

"*When warrants first came into the market in Sept.*, 1847, *the* "*demand was as great as the supply, and even greater; and con-*"*tinued till some time about the middle of the Summer of* 1848. "* * * I purchased in Beloit land warrants *in Nov.* 1847, for "160 acres, and paid therefor $175. *I could not get all I wanted at* "*that time* AT THAT PRICE."

But the most conclusive evidence on this subject is found in the letters of the defendant himself.

See defendants letter to S. C. Field, Sept. 4, 1847. (442 of Rec.)

Defendant's Letter to Geo. B. Field, Dec. 17, 1847, written from Chicago. says:

"I enclose you 3 warrants, straight assignments, *all I could find* "*for sale, and therefore had to pay high*, $140. (277 of Record.)

Defendant's letter to S. C. Field, Nov. 1, 1847: (428 & 429 of Record.)

"I got a letter from Geo. B. last mail. He seemed quite elated "at the prospect before him. I send him by this mail 25 warrants. "I hope the market may continue fine till we get a little through."

Defendant's letter to S. C. Field, December 19, 1847, says: (431 of Record.)

"I was also induced at Chicago to buy three assigned warrants "at a tall price, $140, from Geo. B.'s suggestion at parting. *These* "*were all I could find after much search, and that fact helped to* "*induce the purchase.*"

Letter to George B. Field, Dec. 31, 1847: (278 of Record.)

"*I have this day purchased* 9 *warrants, which I obtained for* $125 *each.*"

Defendant's letter to S. C. Field, Oct. 9, 1847, says: (426 & 427 of Record.)

"This morning I read your letter again; am glad you concluded "as my second thought suggested, to leave both Geo. B. and B. F.

" in the field to supply warrants to the needy, and though I think it " best to *sell while we can get from* $160 *to* $182, if we should see " fit to re-invest. *Yet I think the news from Mexico less favorable* " *for peace and more favorable for warrants than before.*"

This evidence shows that the entrance of land proceeded without any reference to the abundance or scarcity of warrants; and that even when they were VERY SCARCE, as in Chicago, defendant was a PURCHASER and NOT A SELLER, paying "a tall price" for warrants.

B. F. Field, in his deposition, says all the warrants could have been sold, if the same efforts had been made to sell them that were made to select and locate lands. (263 of Record.)

The second reason given in the answer for entry of lands, is that the warrants were assigned by defective assignments.

" It was supposed that the issue of the patents from the General " Land Office to the persons who should locate land on such war- " rants would so far cure the defects in the assignments of the war- " rants as to render it nearly or quite impracticable for the soldiers " to reclaim and defeat the title thus acquired."

If the defendant had entered land for the pupose of avoiding defective assignments, then of course the locations would have been confined to such warrants. Yet nowhere in the letters of the defendant to the Fields is any such discrimination made, and the first four warrants sent for location, Sept. 20, were regularly assigned warrants.

In his letter to S. C. Field, Sept 22, speaking of these warrants, he says: "I had the assignments filled with my name, stating to " Geo. B. explicitly, that they belonged to, and were held in trust " for, Brooks, Field & Co." (419 of Record.)

Defendant's letter to Geo. B. Field, Dec. 31, 1847: (277 & 278 of Record.)

" *I have this day purchased nine warrants, which I obtained for* " $125 *each*, and which are enclosed and forwarded to you here- " with, *together with nine others of the B. & F. cases. Four of* " *these last are unassigned*, and the powers to assign are in the hands " of S. C., whom I shall instruct to forward them to you, though

" in the meantime, you may receive from here powers in three of " the cases. The warrants of Lewella Hansell (spelled by himself " in the assignment, *Llewella*), and Isaac Smith, Jas. B. Chisley, " and Thos. G. Halstead, I obtained from E. W. Clark & Bros., " and as there is some little informality in the assignment—though " *none that should* prove fatal—I stipulated that if they, or any of " them be rejected, you will without delay enclose them to Mr. " Murphy, who will return them to E. W. C. & Bros., who will " refund the money. *I have no doubt these assignments will all pass* " *at Washington, and they should pass at the land office; but you* " *will see to it early.*"

Defendant's letter to S. C. Field, January 1, 1848:

" I have bought and transmitted to George B. nine warrants. I " want you to look closely to matters, get to see the whole lay of " the land and quality of the soil," &c. (432 of Record.)

The utter insincerity of the answer on this sobject, is shown by the fact, that in the only two cases where the defendant *really expected* trouble from the defective assignment, he sent the warrants, not to be located, as the answer pretends, but to be *sold immediately.*

Defendant's letter to S. C. Field, Nov. 14, 1847:

" I met two of our customers *who had made new applications for* " *their warrants, and refused to assign.* One had made his appli- " cation through an ex. M. C. of my acquaintance, who I think will " rest from his labors in this particular case. The other had made " his through a M. C., who has been re-elected, and who values " himself as being the father of the disability clause in the law. " Although I accomplished nothing tangible in my intercourse with " him, I think he looks upon his laurels as growing less bright. I " have written since I saw him, promising to call on him at Wash- " ington. *In the mean time I have sent both these warrants to Geo.* " *B., with directions to* SELL IMMEDIATELY." (430 of Rec.)

Also, letter to G. B. Field, Nov. 14, 1847. (275 of Record.)

In the letter to G. B. Field, Dec. 31, quoted above, Brooks sends 14 assigned warrants to be located.

The bill charges, that for the purpose of keeping Martin's funds from him, Brooks ordered the lands entered to be kept out of market, and when sold, to be sold on credit. The answer positively *denies that he ordered the lands kept out of the market, or to be sold on a credit.* And one reason assigned for the entering of lands is, *that it would facilitate sales, by enabling the firm to sell in* 40 *acre tracts*, to small purchasers.

"Defendant denies that he gave orders to keep lands, when entered, from the market, or not to offer them for sale; or that when sold they should be sold on a credit.

"The demand for 40 acres was so great as to render it advisable to enter or locate 160 acre warrants on land, *to be sold in* 40 *acre tracts.*

"The defendant alleges that he never gave any assent or direction, or made any suggestion to said Fields, *or either of them*, in regard to the entry of lands with the warrants of Brooks, Field & Co., with any other purpose or desire, than that of promoting a more *speedy* and advantageous realization of money FROM THE WARRANTS THAT SHOULD BE USED IN ENTERING OR LOCATING LANDS, *than could be done by a direct sale of the warrants.*" (73 & 74 of Record.)

EVIDENCE.

Defendant's letter to Geo. B. Field, Sept. 20, 1847:

"When lands are once located, *we will not allow them to come into competition with our warrants*, till the latter are all disposed of." (271 of Record.)

Defendant's letter to S. C. Field, Sept. 22, 1847:

"We should now have enough in Wisconsin to supply the demand there, and we should have two or three industrious, prudent, judicious and trusty men constantly employed in examing and selecting the best lands subject to private entry, so that whenever we have a warrant, one or two more, there that no person wants, let it without delay be located on the best land in the market; *and when located, let it not come into competition with*

"*our other warrants, till all are disposed of.*" (418, 419 & 420 of Record.)

Defendant's letter to S. C. Field, October 1, 1847:

"I thought I said to you as I did to George B., that when a lo-
"cation was made of our warrants, *I did not wish the land so lo-*
"*cated to be brought into competition with our warrants till the lat-*
"*ter were disposed of.*" * * * * "But I reiter-
"ate that I can see no advantage to be derived from our locations,
"MADE AS SUCH, to come into competition with our warrants. (424, 425 and 426 of Record.)

Defendant's letter to George B. Field, February 26, 1848:

"In my reply to that letter, I think I omitted to say that I would
"not sell on a credit of over thirty days at anything less than $200.
"If your locations have been such as I have persuaded myself they
"are, they ought to bring at least that much to the quarter, after
"locating. FURTHER I TRUST YOU WILL NOT HAVE NEGLECTED TO
"SELECT A PORTION OF THE CHOICEST LOCATIONS AS NOT IN MAR-
"KET." (283 and 284 of Record.)

As to Sales on Credit.

Deposition of S. C. FIELD:

Question 58.—"Did you sell any of the lands so entered by you, and under your direction; if so, for cash or on credit? *Answer.*—I did sell them, generally on credit."

Answer to question.—"The length of time varied, usually from THREE TO FOUR YEARS; and so did the rate of interest vary from twelve to twenty-five per cent., and in some cases over."

Qeustion 60.—"Was defendant aware of said sales of land on credit; if so, what did he say about the same, approving or disapproving. *Answer.*—I believe he was aware of, and approved of them." (353 and 354 of Record.)

Letter of defendant to S. C. Field, February 12th, 1848:

"The object of your visit to Madison may be one of much im-

" portance to us, and I hope you will have succeeded to the extent " of your desire. I am glad that you find no difficulty in entering " such lands as may be valuable. BEWARE OF LONG CREDITS."

MARTIN'S letter to BROOKS, dated March 15th, 1848, made an exhibit by defendant:

" As for the sales which have been made *on credit, I do not feel* " *disposed to stand them. As Mr. Field did this without any au-* " *thority, let him take them himself*, and give us warrants, which I " know he is now buying." (524 and 525 of Record.)

We quote the above letter to show the language of Martin, in contrast with that of Brooks, upon the subject of lands sold on credit; and also as evidence that Brooks had proviously, in January, 1848, represented to Martin that it was Field's fault that the lands had been entered and SOLD ON CREDIT.

Deposition of GEORGE B. FIELD:

To Interrogatory 16.—" We sold a large amount of land entered with the warrants of Brooks, Field & Co., on various terms, GENERALLY ON CREDIT; for a portion, of from one to four years with interest, and at prices from $1.25 to $2.50 per acre. Mr. Brooks tgenerally advised in regard to all matters pertaining to sales of land, and we acted according. (224 of Record.)

Defendant's letter to George B. Field, February 26th, 1848:

" In reply to that letter, I think I omitted to say that I would not " sell on credit of over thirty day at anything less than $200." (283 of Record.)

The letter of Brooks to B. F. Field, June 21, 1848—just seven days before the purchase from Martin—says Brooks is in favor of reserving certain lands. See letter. (290 of Record.)

We now proceed to other charges of Brooks' acts designed to defraud and deceive Martin, and keep him ignorant of the condition of said business, thereby enabling Brooks to accomplish a fraudulent purchase of said Martin's interest in said business.

24. Your orator further says, that said *defendant, well knowing* the derangement of orator's business in the summer and fall of 1847, *and of your orator's directions to said Field to return to your orator the money realized on said letters of credit*, as aforsaid; and designing to embarrass and ruin your orator, *did, on the 8th day of Sept., A. D.* 1847, *write to said Field not to remit to your orator the said money, but to retain the same.*—Page 14 of Record.

24. Defendant has no definite recollection of having written said Field not to remit to complainant the money received by said Field on said letters of credit; but thinks he may have written said Field, in substance, that it was unneccessary to remit the funds realized on said letters of credit to complainant to the prejudice of the interests of the business of Brooks, Field & Co., and at the same time of so writing, if defendant did so write, he knew that complainant had ordered or requested said Field not to use the letters of credit, but he has no recollection that he knew that complainant had ordered said Field to remit the proceeds of said letters; though defendant admits that his course in the matter would not have been restrained by so knowing.—Pages 72, 75, 76, and 87 of Record.

EVIDENCE.

Martin's telegram to Field. (413 of Record.)
Defendant's letter to Field. (413 of Record.)

25. That one fraudulent device of the said defendant to prevent your orator from learning anything of the condition of said business, previous to the purchase by said defendant of your orator's interest as aforesaid, was the following: Said defendant, with tongue and pen, endeavored to break up all confidence, and prevent all communication between your orator and said S. C.

25. Defendant denies that he had any design or wish to overreach or cheat complainant in the purchase of complainant's interest; that defendant desired or meditated said purchase; that he, with tongue or pen, endeavored to break up or destroy any confidence or prevent communication between complainant and S. C. Field; that defendant represented to complainant, that said

Field, and for that purpose represented to your orator that said Field was a very dishonest man, constantly perverting and misapplying the funds of said business, and trying to injure and defraud both your orator and the said defendant, and that it was dangerous for your orator to write to said Field at all for any purpose; and, believing in the integrity and friendship of said defendant to your orator, your orator did not, after November, 1847, hold any communication or correspondence with said Field until long after said purchase by said defendant of your orator's interest as aforesaid; and that at the same time and with the same design of preventing any such correspondence between your orator and said Field, said defendant, from some time in the summer of 1847 till after the said 28th of June, 1848, constantly, as your orator is informed, and believes, and so states, made representations to said Field that your orator was a very unreliable man, and that the said Field must have no communication with your orator, and obey no order from him; and your orator says, that in this deceitful and fraudulent manner the said defendant entirely broke up and destroyed the friendship and confidence before existing between your orator and the said Field, and thus prevented your orator from learning anything as to the condition of said land warrant business previous to said 28th day of June, A. D. 1848, and for a long time thereafter.—Page 13 and 14 of Record.

Field was a very dishonest man, or that it was dangerous for complainant to write to said Field for any purpose; that defendant made representations to said Field that complainant was a very unreliable main, or that said Field must have no communication with him, and denies that defendant did break up or destroy, or was instrumental in breaking up or destroying any friendship or confidence, before existing between said complainant and said Field.—Page 71 of Record.)

See defendant's answer. (42 of Record.)

Defendant's letter to Martin, March 20th, 1848. (284 of Record.)

Defendant's letter to Field, September 18th, 1847. (447 of Record.)

26. Your orator further says, that said George B. Field, though unknown to your orator, in November, 1847, wrote your orator a letter, giving your orator rather an encouraging account, in general terms, of said land warrant business; and that when said defendant was in New Orleans, in January following, he assured your orator that there was no truth in the said letter of said George B., and that said statements of said letter were only intended to deceive your orator, and the more effectually to enable the said Fields to carry on their rascality.

Your orator is informed and believes, and, therefore says, that said defendant, when he next saw said George B. Field, in April, 1848, told the said George B. Field, to hold no correspondence whatever with your orator; and that the letter the said Geo. B. had written to your orator, as aforesaid, came very near defeating an operation which said defendant expected to effect with your orator, relating to said land warrant business.

Your orator says that the said operation which the said defendant expected to make with (or rather upon) your orator, was

26. Defendant further answering, states that he has no remembrance nor belief about any letter written by Geo. B. Field to complainant in November, 1847, and denies that he ever made any comments to complainant upon such letter or its statements, if such letter was written.

In further answer, defendant denies that when he saw said George B. Field, in April, 1848, defendant told said Geo. B. Field to hold no correspondence whatever with said complainant; or that any letter said George B. had written to complainant, as aforesaid, had come very near defeating any operation which defendant expected to effect with complainant relating to said land warrant business.

In further answer, defendant denies that he ever, at any time or place, used the term "operation" in any conversation with said George B. Field, or in any expression of defendant to said George B. Field, with any reference, relation or allusion to any purchase of, or any desire or design of defendant to purchase complainant's interest in said business; and further denies, that in April, 1848, defendant had any thought, intention or wish to pur-

none other than the fraudulent purchase of your orator's interest in said business, and which said defendant succeeded in accomplishing, most fraudulently, on June 28th, 1848, as aforesaid; and your orator is informed, and believes, that said defendant, when he told your orator that said letter was untrue, as aforesaid, well knew that it was true, all of which deceit and double dealing of the said defendant last aforesaid, was intended to, and did, aid the said defendant in accomplishing said fraudulent purchase on the 28th of June, 1848, of your orator's said interest in said warrant business.—Page 15 and 16 of Record.

chase said interest of complainant; and also denies that defendant practiced, or attempted to practice, with, toward or upon complaint, any deceit or double dealing; or accomplished any fraudulent purchase of complainant's interest in said land warrant business, or the business of Brooks, Field & Co.—Page 75 & 76 of Record.

EVIDENCE.

SHEBOYGAN, Wisconsin Territory, November 20, 1847.

"GENTS.:—Enclosed you will receive land warrant No. 32, issued "to John Walsh, and belonging to Messrs. Brooks & Field. It is "deficient on account of the assignment of Horace Bean not being "attested by two witnesses. Will you please take it to Mr. Ains- "worth, the Notary Public that took the acknowledgment, or to "Mr. Bean, and have it properly attested, and enclose me at this "place. Respectfully, your ob't serv't,

"GEO. B. FIELD.

"P. S. The land warrant business is in a very flourishing way "at this time, and I think will continue so during the winter, if "warrants are not pressed in market more than they have been.

(Record, 300.) "G. B. F."

Deposition of GEO. B. FIELD:

Did you, in November, 1847, write and mail a letter to Martin &

Co., in New Orleans, about said business? If yea, state whether the following is a copy thereof." [Then follows a copy of above letter.] *Answer.* It is a copy of my letter sent to Martin & Co. In April, 1848, or thereabouts, Mr. Brooks referred to my correspondence with Martin & Co. and Lake & Co., and gave me special directions in no case to correspond with them on the land warrant business, as he represented the interest of Martin; and that the letter I had already written to Martin & Co., above referred to, had liked to have seriously interfered with some arrangement he was making, or had made, with Mr. Martin. (Record, 224.)

Question 15. If you state, &c., state whether he stated with whom said operation was expected to be made; and if he did, state here with whom he said it was expected to be made. *Answer.* He did. It was with Mr. Martin. (Record, 224.)

Cross-interrogation:

Speaking of the conversation between Brooks and himself, he says: It was a positive injunction not to communicate with Martin & Co. on the subject of the business of Brooks & Field, for reasons which Mr. Brooks did not give, other than that he had the control or supervision of Mr. Martin's interest, and that what I had written Martin & Co. had seriously interfered, or came near interfering, with some arrangement he was making with Mr. Martin. (Record, 232.)

And again, he says in reply to 15th Interrogatory, by defendant: I can only state what I have in answer before. The imperative manner of Mr. Brooks in prohibiting any further correspondence with Martin & Co. surprised me, and therefore makes my recollection of the matter more vivid. I must confess I thought there was something wrong brewing, although I had no suspicion as to what it was. It left an unpleasant impression upon my mind. (Record, 232, 233.)

27. Your orator further says, that he is informed, and believes, and so says, that after the failure of said Lake & Co., aforesaid, said George B. Field suggested to B. F. Field, of which defendant had notice, the propriety of remitting the avails of said warrant business, to your orator, or to said Lake & Co., on account of said $45,000 of notes, and that the said defendant was greatly exercised and displeased by and at said suggestion, and objected thereto, ordering all said remittances to be made to him and him only. Your orator says, that had this suggestion been followed, your orator would, as the said defendant well knew and feared, have soon learned something of the condition of said business; and the said defendant been prevented from afterwards, on the 28th of June, 1848, consummating said meditated fraudulent purchase from your orator, as aforesaid. And that the said defendant, apprehensive that remittances might be made as suggested by George B. Field, afterwards, on the 19th day of June, A. D. 1848, a few days before the time at which the said defendant hoped to consummate said fraudulent purchase, as aforesaid, wrote to Benj. F. Field, who had the principal management of the affairs of said business, not to let the order of any one else interfere with the orders given by said defendant, and to remit all funds to him, and him only, and that on the 21st day of June, A. D. 1848, the said defendant wrote to said Benj. F. Field,

27. The answer is on pages 76 and 77 of Record.

acknowledging the receipt of $6,800 then lately before remitted by said Field to said defendant, and in said letter applauded the wisdom of said Field that had induced him to remit to said defendant and not to any one else, and therein stated that if said Field had remitted said $6,800 to New York, (meaning your orator's credit there), it would have greatly embarrassed saie defendant's operations; your orator says that said operations, that the said defendant said would have been embarrassed, as aforesaid, were to accomplish the fraudulent purchase of your orator's interest in said business, which said defendant fraudulently accomplished on the 28th day of June, A. D. 1848, as aforesaid. And that true it was, as stated by said defendant in said last letter, it that $6,800 there mentioned, had been remitted to your orator, or if your orator had known of such remittance, it would, as defendant said, have embarrassed said operations and totally defeated them; as your orator would then have seen through the fraudulent and willfully false statement and pretence of said defendant on the said 28th June, that he could only borrow $685 to pay your orator, and he would have known that the small draft on your orator for $435, about the 18th of June, 1848, was unnecessary; and that the statements of said defendant at the time said purchase was by him negotiated, were essentially and radically false; and your orator says that in the last named letter the said

defendant, did also repeat his instructions that all such remittances must be made to him; and did also order said B. F. Field to answer no questions that might be propounded to him by said Lake, or by any one else, but to refer all who might enquire to the said defendant, and to advise him at once of said enquiries; and that said defendant gave the same instructions to George B. Field in relation to answering questions concerning said business; all of which your orator says was designed to, and did, prevent either of said Fields from informing your orator in any way of the condition of said business; and when your orator and the said defendant negotiated and contemplated the sale of your orator's interest to said defendant, as aforesaid, your orator was totally ignorant of any and all these fraudulent, deceitful, and dishonest dealings of said defendant; was ignorant of said remittances of $6,800, as aforesaid, and was kept deceived and ignorant of all these things till long after said sale of your orator's interest, as aforesaid.—Page 16 and 17 of Record.

EVIDENCE.

Defendant's letter to Geo. B. Field, June 19, 1848:

"I have received but one remittance of $1,100 from B. F. since "I left, and nothing from S. C. I trust that you have not made the "suggestion to B. F. that you did to me, to have him remit direct to "New York, though I cannot account for not having received more "from him, since I learned that Mr. Franciscus, of the house of

"Geo. E. H. Gray & Co., has received intelligence from his house "that we are receiving $12,000 per month in Wisconsin. I can- "not imagine any source from whence they could derive any intel- "ligence of what we are doing, except it be yourself. It is cer- "tainly very annoying and embarrassing to me to have the expec- "tations of our creditors so raised and inflated on statements so "vastly disproportionate to the means furnished me for meeting "them. I write by this mail to B. F, asking him to forward to *me* "as fast as possible any means he may be able to collect for B. and "F., and hope he will not heed any suggestions conflicting with "this, as I supposed, settled arrangement." (289 of Record.)

Defendant's letter to B. F. Field, same date:

"I want you to remit to me as fast as possible, directed to this "place, till further advised, and I do not wish any suggestion from "any other source to be allowed to interfere with this request." (289 of Record.) 290.

Defendant's letter to B. F. Field, June 21, 1848:

"I can hardly express to you how much I feel obliged to you "for the soundness of judgment which dictated to you to remit di- "rectly to me rather than to New York or any other place without "my direction. I received yesterday by the hands of Mr. Murphy "your very acceptable remittance of $6,809.98 in coin, bills, and "certificates of deposit. I have only counted the packages of gold "as yet, but have no doubt as to their correctness. In the silver, "one counterfeit dollar was found. I had been rendered some- "what unamiable the day before, by a letter from George B., in "which he suggested the propriety of remitting directly to New "York. I feared he had so directed you. It would have *greatly* "*embarrassed my operations.* I want all advice as well as remit- "tance to pass through myself. A plurality of heads on one body "deforms and weakens. I am highly pleased with your discretion "in the matter. If Mr. Lake, *or any one else*, asks any information

"in relation to our matters, refer him to me, advising me of the "circumstances. Your suggestion as to the reserves in 17, 20, "strikes me as correct and judicious. I am anxious to learn the "details of your progress, what is sold and how. You will remit "here next. I have forwarded you three other warrants not yet "replied to, and I now enclose three others, the receipt of which "you will please acknowledge." (290 of Record.)

"Defendant's letter to G. B. Field, Feb. 13, 1848:

"I intended to say also that remittance from you to Brooks & "Field or on their account, are not to be made to Martin & Co., "Lake & Co., nor Rothschilds & Co., but to Brooks & Field or to "DeLorma Brooks for Brooks & Field."

MEETING OF MARTIN AND BROOKS AT PITTSBURGH, IN JUNE, 1848.

We have shown various fraudulent devices of Brooks preparatory to this meeting and purchase.

1. After he knew that the yellow fever and the financial crisis had changed the circumstances of Martin from what they were when he entered into the business, and rendered it necessary to have the business closed up as soon as possible, according to the agreement, Brooks continued to purchase warrants himself, contrary to the wishes of Martin, and permitted and advised S. C. Field to buy warrants also.

2. That when Brooks had hundreds of warrants which he could have sold for cash, and when he had the cash itself realized from the sales of warrants and lands, he invested money in warrants and drew on Martin to pay expenses.

3. That he countermanded all orders of Martin to S. C. Field

and G. B. Field, to have the remittances made to him, and gave orders to G. B. Field not to write Martin anything about the business.

4. That instead of selling the warrants, as he could and should have done, and of closing up the business in the time contemplated when it was entered upon, he had the warrants located on lands, for the purpose of preventing the closing up of the business.

5. That he concealed the fact of the location of lands from Martin for months, until it was too late for Martin to prevent the locations, and blamed the locating of lands upon the Fields, though he still continued it after informing Martin that it had been done, and after Martin's protest against it.

6. That he had never rendered Martin an account of any kind relating to said business, and assigned as a reason why he did not, and could not, that he had been unable to get an account from the Fields.

7. That in January, 1848, he had alarmed Martin by laying before him, at great length, difficulties relating to said business, which he did not believe existed, and which did not exist.

8. That as soon as Martin was prostrated by the failure of Lake & Co., he sought an interview with Martin, for the purpose of taking advantage of his condition to purchase out his interest in the business, and succeeded.

The letters of Brooks, in which he invites Martin to this meeting can be found on pages of Record ~~270 & 270.~~ 287, 288.

In accordance with this invitation, Martin met defendant in Pittsburg in June, 1848, at which time Martin made the alleged sale to Brooks. This is stated in the bill and admitted in the answer.

I.

At this point, we may refer to authorities to show under what circumstances a purchase between persons standing in the fiduciary relation in which these parties stood to each other, will be upheld.

The parties were partners; and Brooks was the agent of Martin, to manage and control his interest in the firm. They were relatives, and Brooks had been his confidential clerk before the partnership was formed.

Brooks must, therefore, be considered as a trustee, buying from his *cestui que trust.*

After speaking of purchases by trustees proper, 1 Story's Eq. Juris., sec. 323, says:

"There are many other cases of persons standing, in regard to "each other, in the like confidential relations, in which similar prin- "ciples apply. Among these may be enumerated the cases which "arise from the relation of landlord and tenant, *partner and partner*, "of principal and surety, and various others, where mutual agen- "cies, rights and duties are created between the parties by their "own voluntary acts, or by operation of law." "On the whole, "the doctrine may be generally stated, *that wherever confidence is* "*reposed, and one party* has it in his power, in a secret manner, "for his own advantage, to sacrifice those interests, which he is "bound to protect, he will not be permitted to hold any such ad- "vantage."

See *Anderson* vs. *Lemon*, 4 Selden, 236;
Weaver vs. *Wible*, 25 Penn. St., 270;
Church vs. *Church*, 25 Penn. St., 278.

In case of a trustee buying of his *cestui que trust* (and we have shown this doctrine applies to this purchase by Brooks of Martin), when a bill is brought by the vendor to set it aside, it must be shown to the court affirmatively, "that there was a clear contract, "*ascertained to be such, after a zealous and scrupulous examination* "*of all the circumstances*, and it is clear that the *cestui que trust* in- "tended that the trustee should buy, and there is no fraud, no con- "cealment, and no advantage taken by the trustee of information "acquired by him as trustee," and that there was no inadequacy of price or other advantage taken in the purchase.

Michoud et al. vs. *Girod et al.*, 4 How., 552, & notes;
1 Story Eq. Juris., sec. 321, and notes & cases cited;
See, also, 1 Story Eq., sec. 322, 323.

"Therefore, in all cases of purchases by trustees from their *cestui* "*que trust*, where the equity is not barred by acquiescence or con- "firmation, the court will carefully inquire into, and sift all the "circumstances, in order to ascertain the perfect fairness and pro- "priety of the transaction; *and it* WILL REST WITH THE "TRUSTEE *to establish in evidence*, that there was such *bona fide* "contract between them, as according to the rules just referred to, "will sustain the purchase in a court of equity. This court, if sat- "isfied as to this evidence, will sustain the transaction. *But it is* "*almost needless to add that if any unfair advantage has been taken* "*by the trustee*, by withholding information, *or other fraudulent* "*dealing*, the purchase will be at once set aside. And *mere inad-* "*equacy* of price will go a vast way in the mind of the court to "constitute such fraud."

Hill on Trustees, 537 orig. paging.

In *Hunter* vs. *Alkins*, 3 Mylne & Keene, 113, the Chancellor says: "For I take the rule to be this: there are certain relations known

" to the law as attorney, guardian, trustee; if a person standing in " these relations to client, ward, or *cestui que trust*, takes a gift, *or* " *makes a bargain, the proof lies upon him*, that he has dealt with " the other party, the client, ward, &c., exactly as a stranger would " have done, taking no advantage of his influence or knowledge, " putting the other party on his guard, bringing everything to his " knowledge which he himself knew." "In a word, standing in " the relation in which he stands to the other party, *the proof lies* " *upon him* (whereas, in the case of a stranger, it would lie on those " who opposed him) to show that he has placed himself in the po- " sition of a stranger, that he has cut off, as it were, the connection " which bound him to the party giving or contracting, and that " nothing has happened, which might not have happened had no " such connection subsisted.

In *Pugh's heirs, &c.* vs. *Bell's heirs*, 1 J. J. Marshall, 399, the " court says: "The alleged purchase from the defendants in error, " is entitled to no consideration. They are infants, and if they had " not been, the contract could not have been enforced, because it " was made with the trustee, for a greatly inadequate consideration, " and must have been made without a knowledge by them of their " rights."

Where a trustee sells to himself, all the cases decide that the sale will be set aside at the election of the *cestui que trust*, even if shown to be perfectly fair and honest, and that a full, adequate considera- tion was paid.

In *Morse* vs. *Royal*, 12 Ves., 355, the Chancellor says: "To that " class of cases, I shall add the case of a trustee selling to himself. " *Without any consideration of fraud*, or looking beyond the rela- " tion of the parties, *that contract is void*." "I have no difficulty " in saying I should not have regretted to have found that the rule " extended even to such a case as this." [Trustee buying of *cestui*

que trust.] "Finding that that there is so much difficulty in sup-
"porting a purchase by a trustee from the *cestui que trust*, that the
"transaction ought to be guarded with that necessary degree
"of jealousy, *running so near the verge*, it might be better embraced
"under the policy of the law."

See, also—

Lewin on Trusts, 8 Law Lib., new series, 192, 193;
Middleford vs. *Austwick*, 1 Sim., 89;
Vol. 2 Cond. Eng. Ch. Rep., 45.

This was a case very like the one before the court. A partner, acquainted with the business, buying of one that was not. The partner who purchased was shown to have kept the books; and the partner selling his interest did not know the condition of the business. The sale was set aside for inadequacy of consideration only.

The doctrine to be deduced from these authorities is, that to sustain this purchase, *Brooks must show* that Martin examined closely into the condition of the business, and became fully and perfectly acquainted with the value of the interest he was selling; and if not, and it is immaterial why he did not, the sale must be set aside, *even if there was no unfairness, and full consideration paid.* And if any fraud, or misdealing is shown, or if there was an inadequacy in the consideration paid, then the sale will also be set aside.

II.

28. That at the earnest solicitation of said defendant, your orator met him, said defendant, between the 22d and 25th days of June, 1848, or thereabouts, and the said defendant then, with appearance of deep sorrow, opened the topic of said land warrant business. Your orator was aware that said defendant prided himself on his great diplomatic powers; but your orator did not and could not believe or fear that the said defendant would practice them upon your orator, broken down, dispirited, sick and sad, as the said defendant well knew your orator to be. But on the contrary thereof, considering the relationship, the long confidential relations and business transactions before mentioned, your orator reposed perfect confidence and belief in all said defendant then said. That the said defendant then stated to your orator that said land warrant business was in a most woful and disastrous fix; that there had been great difficulties attending the the same; that the said Field had to the defendants great regret, and against his express orders, and without his knowledge, entered land with most of said warrants, and had entered it in the name of his brother, Benjamin F. Field, who was totally insolvent, and refused to convey said land to Brooks, Field & Co., and that said S. C. Field had misused and misapplied and appropriated a great part of the money received by him in said business; all of

28. Defendant states that he met, in due course of business, complainant in Pittsburg on the 23d day of June, 1848.—Page 55 of Record.

Defendant denies that he then, with any appearance of "deep sorrow," opened the topic of said land warrant business. But defendant states that the topic of the business of Brooks, Field & Co., was opened by and between complainant and defendant, with the appearance of suitable earnestness on both sides. Defendant admits that he treated the subject with a frank earnestness of manner, such as he thought befitted the occasion and the critical situation of said business.—Page 55 of Record.

Defendant denies that complainant was aware that defendant prided himself on his diplomatic powers, and denies that he did or does so pride himself.—Page 55 of Record.

Defendant admits that complainant did repose "perfect con-" fidence and belief in all that " defendant then said," and that such confidence was justified by the facts of the case, and by all the previous, by the then present and by all the subsequent transactions between complainant and defendant. Defendant states that he does not recollect that he told complainant, at that meeting, " that the land warrant business " was in a most woful and disas-" trous fix;" but defendant states that such an expression would have very aptly described the

which misconduct of said S. C. Field the said defendant had constantly, but in vain, tried to prevent, and that the land so entered by said S. C. Field, if it could be obtained by conveyances from said B. F. Field, could only be sold in small quantities and on credit; and the said defendant then stated to your orator with great apparent sincerity and sorrow, that in view of all these difficulties, the said defendant was weary of said business, had spent a year therein to no purpose, and was thoroughly resolved to abandon the same entirely and give up all for lost, unless your orator would purchase the interest of said defendant in said business, or sell your orator's interest in said business to said defendant.

Your orator further shows that the said defendant then well knew that your orator could not buy out the interest of said defendant; that he was ruined in fortune, could not pay his creditors in full, that he must return to New Orleans to close up his business there, that his health would not permit him to attend to said business; and the said defendant, as your orator believes and therefore says, presented to your orator *said alternative proposition*, knowing that he could not buy the interest of said defendant, could not take charge of said business, and that therefore your orator would be compelled to accept such consideration for the conveyance of his interest as said defendant should choose to offer. Your orator then stated to said defendant the impossibility of

condition of the business of Brooks, Field & Co., at that time. —Page 55 of Record.

But defendant denies that he stated to complainant that S. C. Field had, to defendants great regret, and against his express orders, and without his knowledge, entered land with the most of the said land warrants, and had entered in the name of Benjamin F. Field, or that said B. F. Field was insolvent, or that he refused to convey said land to Brooks, Field & Co., or that the land so entered, if it could be obtained by conveyance from said B. F. Field, could only be sold in small quantities —Page 57 of R

Defendant de
to ~~defendant~~ th
to abandon sai
up all for lost, unless compla
would purchase the interest of said defendant in said business, or sell complainant's interest in said business to defendant.—Page 59 of Record.

Defendant, further answering, denies that he knew or believed that complainant could not buy out the interest of defendant in said business of Brooks, Field & Co.—Page 59 of Record.

Defendant denies that complainant had no knowledge of said land warrant business, and denies that he knew or believed that complainant's health would not permit him to attend to said business. Defendant denies that he presented to complainant any alternative proposition as alleged in said bill, and denies that complainant was compelled to accept

II.

28. That at the earnest solicitation of said defendant, your orator met him, said defendant, between the 22d and 25th days of June, 1848, or thereabouts, and the said defendant then, with appearance of deep sorrow, opened the topic of said land warrant business. Your orator was aware that said defendant prided himself on his great diplomatic powers; but your orator did not and could not believe or fear that the said defendant would practice them upon your orator, broken down, dispirited, sick and sad, as the said defendant well knew your orator to be. But on the contrary thereof, considering the relationship, the long confidential relations and business transactions before mentioned, your orator reposed perfect confidence and belief in all said defendant then said. That the said defendant then stated to your orator that said land warrant business was in a most woful and disastrous fix; that there had been great difficulties attending the the same; that the said Field had to the defendants great regret, and against his express orders, and without his knowledge, entered land with most of said warrants, and had entered it in the name of his brother, Benjamin F. Field, who was totally insolvent, and refused to convey said land to Brooks, Field & Co., and that said S. C. Field had misused and misapplied and appropriated a great part of the money received by him in said business; all of

28. Defendant states that he met, in due course of business, complainant in Pittsburg on the 23d day of June, 1848.—Page 55 of Record.

Defendant denies that he then, with any appearance of "deep sorrow," opened the topic of said land warrant business. But defendant states that the topic of the business of Brooks, Field & Co., was opened by and between complainant and defendant, with the appearance of suitable earnestness on both sides. Defendant admits that he treated the subject with a frank earnestness of manner, such as he thought befitted the occasion and the critical situation of said business.—Page 55 of Record.

Defendant denies that complainant was aware that defendant prided himself on his diplomatic powers, and denies that he did or does so pride himself.—Page 55 of Record.

Defendant admits that complainant did repose "perfect con- "fidence and belief in all that "defendant then said," and that such confidence was justified by the facts of the case, and by all the previous, by the then present and by all the subsequent transactions between complainant and defendant. Defendant states that he does not recollect that he told complainant, at that meeting, "that the land warrant business "was in a most woful and disas- "trous fix;" but defendant states that such an expression would have very aptly described the

which misconduct of said S. C. Field the said defendant had constantly, but in vain, tried to prevent, and that the land so entered by said S. C. Field, if it could be obtained by conveyances from said B. F. Field, could only be sold in small quantities and on credit; and the said defendant then stated to your orator with great apparent sincerity and sorrow, that in view of all these difficulties, the said defendant was weary of said business, had spent a year therein to no purpose, and was thoroughly resolved to abandon the same entirely and give up all for lost, unless your orator would purchase the interest of said defendant in said business, or sell your orator's interest in said business to said defendant.

Your orator further shows that the said defendant then well knew that your orator could not buy out the interest of said defendant; that he was ruined in fortune, could not pay his creditors in full, that he must return to New Orleans to close up his business there, that his health would not permit him to attend to said business; and the said defendant, as your orator believes and therefore says, presented to your orator *said alternative proposition*, knowing that he could not buy the interest of said defendant, could not take charge of said business, and that therefore your orator would be compelled to accept such consideration for the conveyance of his interest as said defendant should choose to offer. Your orator then stated to said defendant the impossibility of condition of the business of Brooks, Field & Co., at that time. —Page 55 of Record.

But defendant denies that he stated to complainant that S. C. Field had, to defendants great regret, and against his express orders, and without his knowledge, entered land with the most of the said land warrants, and had entered in the name of Benjamin F. Field, or that said B. F. Field was insolvent, or that he refused to convey said land to Brooks, Field & Co., or that the land so entered, if it could be obtained by conveyance from said B. F. Field, could only be sold in small quantities and on credit. —Page 57 of Record.

Defendant denies that he stated to ~~defendant~~ that he was resolved to abandon said business, or give up all for lost, unless complainant would purchase the interest of said defendant in said business, or sell complainant's interest in said business to defendant.—Page 59 of Record.

Defendant, further answering, denies that he knew or believed that complainant could not buy out the interest of defendant in said business of Brooks, Field & Co.—Page 59 of Record.

Defendant denies that complainant had no knowledge of said land warrant business, and denies that he knew or believed that complainant's health would not permit him to attend to said business. Defendant denies that he presented to complainant any alternative proposition as alleged in said bill, and denies that complainant was compelled to accept

his, in any event, purchasing said defendants interest, and after trying in vain to induce him to continue on in said business and close it up, and reminding him of his promise which induced your orator to embark therein, that he, said defendant, would take the entire charge of said business, and in all things guard and protect pour orator's interest as his own, your orator was compelled to listen to such proposition as the said defendant should be generous enough to make.

You orator further shows and says, that the proposition which said defendant made, at the said last named interview, was as follows, viz: said defendant would give your orator, his, said defendant's own obligations without security to lift and pay said Brooks, Field & Co.'s notes to the amount of thirty thousand dollars, so passed by said Lake & Co., as aforesaid; to pay in cash to your orator the ($15,000) fifteen thousand dollars of the notes of said Brooks, Field & Co., which your orator then had, and of the balance due your orator for advance, as aforesaid, of about $7,000, he would only pay $3,685.88, leaving a balance of $3,314.12 unpaid, so that your orator should receive in cash $18,685.88, and the said defendant's obligation, unsecured, to pay said $30,000 outstanding against said business, as aforesaid, and this was all the said defendant would give your orator, and this proposition was dependant upon two contingencies: First, that the said defendant should be able to borrow the such consideration for the conveyance of his interest as defendant should offer. Defendant denies that complainant stated to defendant the impossibility of his, in any event, purchasing said defendant's interest, or tried to induce defendant "to continue on in said business and close it up," otherwise than as a purchaser of complainant's interest. Defendant denies that complainant reminded him of any promise of defendant that induced complainant to embark in said business, and denies that he ever made any promise to induce complainant to so embark. Defendant further denies that complainant was under any compulsion or misapprehension in the matter.—Page 59 of Record.

In further answer, defendant denies that at said last named interview he proposed to give to complainant his own obligations to lift and pay said Brooks, Field & Co.'s notes to the amount of $30,000 passed by said Lake & Co., or to pay in cash to complainant any $15,000 of said notes of Brooks, Field & Co., then held by complainant, or would pay $3,685.88, or only that sum, of any balance due complainant for any advances made by him, either as depending upon any contingency or not as depending upon a contingency.—Page 60 and 61 of Record.

In further answer, defendant again denies that complainant made any advances to said business. Defendant has no knowledge nor belief as to the rate of interest that any money cost com-

money to pay your orator, as aforesaid; and second, that your orator should give said defendant a full assignment of all your orator's interest in said land warrant business.

Your orator further states, that so great had been the scarcity of money during all the time he had been advancing money for said business, as stated hereinbefore, that all the said advances had cost your orator twelve per cent. interest; all of which your orator then, in said interview, reminded the defendant of, and tried to get better terms, but all in vain; said defendant said he knew it was a hard case, he felt more for your orator than he did for himself, but that the proposition the said defendant then made was the very best he could afford to make your orator in the premises, and that he, said defendant, feared he should have a hard bargain at the rate proposed, and your orator, being entirely ignorant of the true condition of said business, and reposing implicit confidence in said defendant, and believing all his said representations were true, and that the said defendant was really as he professed, your orator's friend, your orator, unable to buy out said defendant's interest, unable to attend to the business, ignorant of its character and condition, disheartened by the accumulating troubles that were besetting him, was compelled to and did accept said defendant's proposal.

Your orator states, that he was the more readily induced to believe the representations of said plainant, and defendant denies that complainant reminded him in said interview that any money had cost complainant 12 per cent. interest; but defendant admits that the matter of interest was introduced by complainant at said interview, and that complainant tried hard to get better terms.—Page 62 of Record.

And defendant denies that he said he knew it was a hard case, or felt more for complainant than he did for himself.—Page 64 of Record.

Defendant denies that complainant was under any compulsion or misapprehension in the matter, and denies that defendant "had, on or about the 18th of "June, 1848, drawn on complain-"ant or on Martin & Co. for the "sum of 435 dollars," or any other sum for expenses in said business, or under pretence of expenses in said business.—Page 65 of Record.

And defendant denies that any such draft, or the fact that any such draft had been drawn by defendant, if any had been drawn, had any influence upon the belief or actions of complainant at said interview and negotiation, as charged by complainant in said bill.

Defendant further answering, denies that when complainant and defendant parted at the interview aforesaid, it was agreed between them to meet again on the 28th of June, A. D. 1848, to complete said arrangement between complainant and defendant, if the said defendant should succeed in borrowing the requi-

defendant as to his pecuniary condition and the disastrous condition of said business from the fact that a very few days before said last mentioned interview, the said defendant, knowing all the pecuniary difficulties of your orator, had, on or about the 18th of June, 1848, drawn upon your orator for the small sum of 435 dollars for expenses in said business.

That when your orator and said defendant parted at the interview last aforesaid, it was agreed between them to meet again on the 28th of June, A. D. 1848, to complete said arrangement between your orator and said defendant, if the said defendant should succeed in borrowing the requisite amount of cash. That on the 28th June, 1848, your orator and said defendant again met, and the said defendant represented to your orator that said defendant had been able to obtain no more than 685 dollars in cash, and that by borrowing, which he then paid your orator; that the said defendant then proposed to pay your orator the remaining 18,000 dollars in time drafts instead of money, as follows, viz: 1st, drafts drawn by B. W. Snodgrass & Co., on Philadelphia, acceptance waived, dated June 26, 1848, at 35 days from date for 6,000 dollars; 2d, drafts drawn by defendant on E. W. Clark & Co., acceptance waived, dated June 26, 1848, at 35 days after date, endorsed by B. W. Snodgrass & Co., for 6,000 dollars; 3d, said defendant's drafts, drawn on E. W. Clark & site amount of cash.—Page 65 of Record.

Defendant denies that he made any representation about having to borrow the 685 dollars and 88 cents paid to complainant.—Pages 65 & 66 of Record.

But defendant denies that he made any pretence of any need or intent to borrow or to try to borrow for any payment he stipulated to make at the time.—Pages 66 & 67 of Record.

Defendant admits that complainant executed a complete assignment of all his interest in said land warrant business to defendant, but not by a simple bill of sale, it was by an irrevocable power of attorney for consideration, a copy of which is hereto attached as exhibit No. 3.—Page 97 of Record.

Defendant further answering, states that it is true that complainant had never, up to the time of this sale, obtained a perfect accurate account and statement of the affairs of said Brooks, Field & Co., but so far as defendant had obtained them or had knowledge of them, or so far as complainant chose to examine the details thereof, complainant was fully informed by defendant; and defendant states that it is not true that complainant was unable to obtain such account and statement, so far as defendant had knowledge and complainant required.—Page 67 of Record.

After defendant's visit to Sheboygan in April, 1848, as hereinbefore stated, where he obtained the first detailed statement

Co., acceptance waived, dated June 26, 1848, at 65 days after date, endorsed by said defendant for 6,000 dollars, which, together with 685 dollars and 88 cents, your orator was compelled to and did then receive of and from said defendant in place of the 18,685 dollars and 88 cents which said defendant had promised as aforesaid to pay in cash, and in consideration thereof your orator executed to said detendant a bill of sale and complete assignment of all your orator's interest in said land warrant business, a copy of which bill of sale, your orator prays the said defendant may be compelled to attach to his answer to this bill; your orator having no copy thereof, is unable to state its contents with great particularity.—Pages 9, 10 & 11 of Rec.

from said Fields or either of them, of their doings in the said business of Brooks, Field & Co., defendant had no opportunity of communicating with complainant until the interview aforesaid, when defendant, as hereinbefore stated, showed complainant said statement and offered any explanations complainant might desire and that defendant could give; but complainant seemed to have little taste or inclination for examining the details.—Page 71 of Record.

Defendant, in further answer, admits that on the 26th day of June, 1848, he had placed on deposit with B. W. Snodgrass & Co., as stated in complainant's bill, money to the amount of $8,000.—Page 79 of Record.

The allegations in the bill, as to what was said and done at this meeting, we have copied at length. We have also copied those parts of the answer, which are at all responsive to the bill, and either admit or deny its allegations. There are, in the answer, some thirty pages devoted to this meeting, and what preceeded and followed it. (Record 55 to 85). Brooks relies upon this answer to overpower all opposing evidence on this subject; and knowing that no one was present at the interview but Brooks and Martin, we find in the answer, among other things, the following statements, admitted by Brooks, to have been made by him to Martin during the negotiation for said purchase:

1. That the business looked gloomy to him, and that it was in a "wofnl and disastrous fix." (Record 55).

2. That there were great difficulties and hazard connected with said business; one of the greatest of which was the power of at-

torney difficulty—upon which Brooks had dwelt at length in New Orleans in January, 1848—and which, in June, 1848, as he says, still existed in all its force, and rendered the lands of Brooks, Field & Co. of doubtful title. (Record 56, 57, 58 & 59).

3. That the Fields had entered lands with the most of the warrants of the firm; and that, owing thereto, the assets of the firm had come to consist of wild, not readily saleable lands, which had been entered to meet an expected demand. That immediately after the entry of the lands, in the Fall of 1847 and early in the Spring of 1848, *then* came the yellow fever of California, to absorb the attention and what little change there was among the people; and that on the 23d of June, 1848, the demand for lands was likely to be defeated by the attractions of California; that this emigration then going on was a notorious fact, which made it perfectly apparrent, to both Brooks and Martin, that the sale of lands must be dull and slow, and that lands could not likely be sold in large quantities for ready pay. (Record, 56 & 57).

4. That for some time after the commencement of said business, Brooks had received cheering accounts from the Fields of the prospects and progress of said business; but that the fair promises had always failed. (Record, 55).

5. That up to near the last of April, 1848, Brooks had never been able to get of the Fields, or either of them, a statement of the business in their charge; and that the statement he obtained, in April, was an imperfect one. (Record, 58, 59, 70 & 71).

6. That the imperfect account which he had obtained from the Fields, he showed Martin, and offered to explain it to him; but that Martin had no inclination to examine, and did not examine it. (Record, 59 & 71).

7. That he did not submit to Martin a proposition to buy or sell, as the bill states; but that the proposition to sell came from Martin,

and that for some time Brooks refused to buy, but finally, in some way and for some reason which he fails to state, he did buy. (Record, 59, 61, 62 & 63).

8. That he did not doubt the ability of Martin to buy his interest, and secure him against the liabilities of the firm. (Record 59 & 63).

9. That Martin came to said meeting intending to sell, and prepared to sell; and, therefore, brought with him the accounts of Martin & Co. against Brooks, Field & Co., all ready made up. (Record, 60).

10. That during said negotiation, Brooks stated to Martin that he could not pay the $15,000 of notes held by Martin against Brooks, Field & Co. without borrowing,; and that the means for paying the liabilities of the firm could not be realized from its assets in one or two years. (Record, 62, 79).

11. That during said negotiation Martin was in good health, and showed unusual tact and ability in making a bargain, and that he reposed perfect confidence in all that Brooks said. (Record, 55, 80, 81).

The bill states, and the answer admits, that $18,000 in time drafts, and $685.88 in cash, were paid to Martin, by Brooks, on the 28th of June, 1848. (Record, 10, 11, 61, 62). The bill claims that $3,000 of said sum, were paid as interest due Martin for advances to said firm, and that this sum did not pay all the interest due by some $3,000; and that the $15,685.88 were paid as principal due Martin. It is admitted on all hands that this is the only payment Brooks made to Martin. The answer claims that $3,000 of said payment were made as consideration for Martin's interest in the business; and if this were true, it would leave some $6,000 due Martin for interest, for which Martin never received anything. Brooks claims that he paid Martin said $3,000 for his interest in the business, and

Martin claims that the whole of said $18,685.88 were paid him as a debt, and that he received no consideration for his interest in the business, but that he was compelled to transfer his interest to Brooks to get the debt that was due him, and that then he did not get it all.

To show that the bill is true and the answer untrue, as to this payment, we refer to the memorandum of settlement, made up by Brooks and in his hand writing, in which, at the division and settlement in the Fall of 1848, he charges the whole of these $18,685, with interest, to the firm, as a payment made for the firm, with the funds of the firm; and in which he charges Martin one-third of said $18,000. (Record, 481). See also the account rendered at said time by Brooks, in which he charges said $18,000 as notes and paid Martin & Co. for the firm. (Record, 484). These exhibits show that Brooks got the interest of Martin for nothing.

We shall now inquire into the truth of the statements Brooks admits he made to Martin on the 24th and 28th June, 1848, which induced Martin to part with his interest in the business for nothing.

I.

The Condition of the Business.

Was the interest of Martin of any value, or was it not? Was the business in a woful and disastrous fix, or was it in a prosperous condition?

The disclosures of this case enable us to state the exact condition of the business on the 28th June, 1848, crediting the defendant with everything he claims to have paid, and charging him with only what we are able to prove went into his hands.

Condition of the business of Brooks, Field & Co. on the 28th June, 1848:

Cash advanced to the firm by Martin..... $57,856 06

See Division Book, p. 260, on file.

See Result Book, p. 6, on file.

Cash received from sales of lands and warrants....		38,864 03
See Division Book, p. 260, on file.		
See Result Book, pp. 6 to 33, on file.		
		$96,720 09
Cash paid for warrants, expenses, salaries and balances, including said $6,326 50 of balances said to have been paid, and all other payments claimed to have been made up to, and including, the 28th June, 1848.....		72,064 95
Cash on hand June 28, 1848.....		$24,655 14
See Result Book, on file.		
Bills receivable, bearing interest, on hand.....		28,495 00
See Division Book, p. 274, on file.		
Land Warrants on hand, about 100, at $1.75 each..		17,500 00
Lands on hands, 46,553 84-100 acres.....		

RECAPITULATION.

Cash on hand.....	$24,655 14
Bills receivable, on hand.....	28,495 00
Land warrants, "	17,500 00
	$70,650 14

LIABILITIES.

Notes in hand of Martin.....	$15,000 00	
Interest paid on 28th June.....	3,000 00	
Notes in Akron Bank.....	15,000 00	
Notes in hands of Loker, Renick & Co.....	5,000 00	
Notes in hands of Geo. E. H. Gray & Co.....	5,000 00	
Notes in hand of J. P. Curtiss & Co.	2,500 00	
		45,500 00
Excess of cash assets over liabilities.....		25,150 14

Most of the above liabilities matured in August and September, 1848.	
Value of 46,553 84-100 acres of land at $1 25 per acre.....	58,192 42
Cash value of assets, after paying all liabilities, on 28th June, 1848.....	$83,342 56

This statement credits the defendant with more than $5,000, for which defendant has furnished no proof but his own oath, and which payment defendant was unable to specify or explain.

See deposition of Brooks (Record, 680, 681, 682, 683, 684).

The division book and the result book, referred to as showing the items of which these accounts are made up, with the references to the proofs sustaining the items, are on file in the case for reference, and are reported correct by the Master.) Record, 612, 615, 616, 617).

This statement shows that the cash assets of the firm, on the 28th June, 1848, including cash, obligations for land sold, bearing, in no case, less than 12 per cent. interest, and payment secured by the land, together with land warrants, the same as cash, amounted to the sum of $25,150.14, over and above all the liabilities of the firm of every description, including said $3,000 which Brooks claims to have paid for Martin's interest, and not including the lands on hand, 46,553 84-100 acres, worth, at government price, $58,192.42, but actually worth, being choice locations, *one hundred thousand dollars.* At government price the assets exceeded the liabilities, on the 28th June, 1848, $83,342.56, and the interest of Martin, for which Brooks gave nothing, was worth $36,670.72. (See Books referred to on file).

II.

Knowing that such would prove to be the amount of the assets at the time of the sale, if the case ever came to an accounting, Brooks refused to permit an account of the business on that day, to accompany his answer, and before the Master, tried to prevent the making up of an account showing the receipts, expenditures and assets of said firm on the 28th June and 28th November, 1848, and at all other times. (Record, 609, 610). But to doaway, if possible, with what he knew could be shown to be the condition of the business at the time of the sale, Brooks, in his answer, attempts to show that certain difficulties and hazards attended said business, and greatly depreciated the value of the assets, and that among these was the power of attorney difficulty, to which we again ask the attention of the court.

1. At the time the articles of co-partnership were entered into, and until Brooks & Field had advanced to 115 soldiers, nothing was said about taking undated powers of attorney from the soldiers, at the time of making the advances to them, nor was it contemplated. (Record, 33, 427, 428). But it was the understanding that after the issue of the warrants, the assignments of the soldiers were to be obtained, (Record, 39, 40, 47, 48), and though said powers of attorney were taken from the soldiers some time after the business was commenced, it was not the intention of Brooks & Field to rely upon said powers of attorney, but it was their intention and their practice to obtain from the soldiers their assignments to the warrants at the time of paying to them their balances. Therefore S. C. Field spent the months of August, September, October and November, 1847, and Brooks the months of October, November and December, in paying said balance and getting said assignments. (Record, 355, 385, and letters of Brooks to Field, 414 to 432, Rec). The Record presents only two cases where the soldiers refused to assign their warrants on the payment of the balances due them, and those warrants Brooks ordered sold without delay; but they

were not sold, but located, and patents issued for them to Brooks & Field. (Record, 275, 430, 294).

2. There is no evidence in the case that any warrants, sold or located by said firm, were assigned by powers of attorney, which had been executed before the issue of the warrants to which they belonged, except the two before referred to; and if there were any others, of which there is no evidence, it was not because the soldiers refused their assignments, but because Brooks, instead of getting from the soldiers their assignments at the time of paying them their balances, took from them and instructed Field to take, receipts for the money paid, and in said receipts new obligations to assign said warrants, if required so to do; and Brooks contended that said receipts were as good and valid as new powers of attorney or direct assignments. (Record 454, 416, 419, 421, 424, 432). It appears, from the evidence, that all, or nearly all, of said soldiers were paid the balances due them, and that they assigned their warrants, or gave new powers of attorney after the issue of their warrants, or gave receipts for the money due and new obligations to assign, if required. The whole amount of balances due soldiers, when Brooks left New Orleans, was some $12,283. (Record, 506, 516). In April, 1848, defendant says he had paid of said balance, $6,326.50, and of course he had not paid without, in some way, securing the warrants (Record, 484, account rendered by Brooks at settlement); and up to the 1st May, 1848, Field had paid $1,075.50 (Record, 495, account of Field at settlement); and Martin & Co. had paid, under the orders of Brooks, $1,338.20, obtaining the required assignments or powers of attorney, (Record, 522, 523, account of Martin & Co). These payments to the soldiers had all been made before the 28th June, 1848, as shown by the proof cited, and amounted to $8.740.50 out of the $12,283.

After April, up to which he had paid $6,326.50, and between April and the settlement in October, Brooks had paid $2,282.50 of balances, and the most, if not all, of said payments must have been made before the 28th June, 1848; for after that time Brooks had

not been where he could make said payments. That he made said $2,282.50 payment, appears from his account rendered at the division, (Record, 484), and that a large portion of this amount was paid in May, 1848. (Letter of Brooks to S. C. Field, May 31, 1848, Rec. 434, 435). These sums, all added, make $11,023 that had been paid at that time, leaving only about $1,200 to pay. Of course, as far as the balances were paid, the warrants were made good and secure, if they were not so before. We can not and will not suppose that Brooks would pay these balances and still leave the warrants in uncertainty. He therefore stated, when we demanded of him receipts for these payments, before the Master, that he did not take receipts, but did take the assignments of the warrants, when he paid the balance. (Record, 683).

These facts show that under the worst aspect of the case, only a comparative few of the locations of land, made by Brooks, Field & Co., could have been in any way affected by said powers of attorney, had the land been located with such warrants. Besides, there were more than one hundred warrants sold; and, as Brooks ordered the only warrants sold which the evidence shows had been refused assignment, it is reasonable to suppose that those for which he did not pay the balances, if there were any, had also been sold.

3. But the depositions in the case, and the letters of Brooks to the Fields, show Brooks had no such fears relating to said warrants, and that he never named the invalidity of them to any one but Martin, and that warrants with powers of attorney were as saleable and passed as readily at the land offices as those with direct assignments, and that not one warrant was ever lost to said firm owing to said assignments.

EVIDENCE.

Defendant's letter to S. N. Clarey, Aug. 18, 1847:

In relation to the warrants you may receive, I wish to urge the

importance of forwarding all to me except the Louisville cases, which you will forward at once to Mr. Field, without delay, as soon as assigned, those you expect to get assigned there, and the others without waiting for the assignments, as I have the powers of attorney. (Record, 445).

On his way to New Orleans, defendant writes from Memphis, to Geo. B. Field, Jan. 6, 1848:

"Since I left you at Milwaukee, I have forwarded you from Chicago, Dec. 17, three warrants; from St. Louis, Dec. 26, twelve warrants; from same, Dec. 31, eighteen warrants; and enclose you herewith, seven; five unassigned. For these S. C. will forward the powers of attorney for assigning." (Record, 279).

Letter of defendant to Geo. B. Field, February 15, 1848:

"I have learned that a number of patents have issued, and among them several that were assigned by powers of attorney." (Record, 282).

These letters prove that, on his way to New Orleans, he had no doubt about powers of attorney. In New Orleans the answer admits he dwelt at great length upon powers of attorney. The last letter shows that on his arrival at Washington he found that no objection was made, either at the land office or by the department, on account of warrants thus assigned.

On the 20th March, 1848, Brooks received a letter from G. B. Field, in which said Field expressed some fears respecting certain powers of attorney, and Brooks says to him in reply:

"I trust your apprehensions about the validity of warrants are without any just foundation. I hope the trip of S. C. will not prove an unnecessary expenditure."

S. C. was going out to get the assignments for these warrants. (Record, 285).

Letter to B. F. Field, July 1, 1848:

"I wrote you on the 5th June with three warrants, and on the 21st with three more, to neither of which I have any reply. I now enclose you thirteen, and by same mail I direct S. C. to forward you the powers of attorney." (Record, 291).

Letter to S. C. Field, July 1, 1848:

"I came here day before yesterday, on purpose to see Mr. Trebue, whom I have at last succeeded in meeting. I have received the thirteen warrants from him, and by this mail forward them at once to B. F., to whom I wish you to forward the powers of attorney without delay." (Record, 435).

Letter to Geo. Field, Aug. 6, 1848, from Washington:

"I have been here two days, and am just now about to leave for home. I have only time to say that I find no cause of alarm. The returns from Green Bay are not yet received, but I am satisfied that their retention has no reference to the nature of the transfer of warrants. Discretion, prudence, and hands off, and we have nothing to fear. I learn that a few patents have been issued to Fields and returned to the land office on entries made in October." (Record, ~~278~~ 293.

Letter to B. F. Field, Aug. 12, 1848:

"I concluded to take Washington City on my route home and was pleased to learn that the new apprehensions of Geo. B. had had no proper foundation. All things remain in *statue quo*. I learned that patents had been issued, and returned to Green Bay, on some locations made in October, by or for some of the Field family." (Record, 293).

Letter to B. F. Field, March 14, 1849:

"While in Washington I had despatched to you 284 patents, most of them on B. & F. warrants. It will be some time before there will be another batch ready. In this batch were included those issued on two warrants I forwarded before I was in Wisconsin at all, with instructions to dispose of at once." (Record, 294).

Deposition of JAMDS M. FRANCISOUS:

7th Question. Do you know what business De Lorma Brooks and Spafford C. Field were engaged in, in New Orleans, in the Summer of 1847, under firm name of Brooks & Field, and were you engaged in same business, and are you acquainted with the character and nature of said business, &c.? *Answer.* They were buying soldiers' discharges, for services in the Mexican war, and obtaining land warrants for them. I was (meaning was engaged in said business). I am fully acquainted with said business.

9th Question. State whether land warrants, assigned by powers of attorney, were or were not saleable that Winter, and whether there was any, and if any, what difference between the saleability of warrants thus assigned and those with direct assignments (Record 148). *Answer.* Those assigned by powers of attorney were saleable. There was no difference between direct assignments and powers of attorney. And in answer to third cross-question, he says, We made no difference in selling 160 acre warrants with direct or indirect assignments." (Record, 148, 149, 150).

Deposition of H. H. GRAY:

I was employed in the years 1847 and 1848, to locate land warrants for Brooks & Field. Some of the land warrants located by me for Brooks and Field were assigned in blank, by the warrantee, and some by power of attorney. I cannot state as to how many were assigned in blank, nor as to how many were assigned by powers of attorney. There were none assigned directly. Warrants assigned by power of attorney were received without objection at the land offices of the United States in payment of lands thus located upon. (Record 198, 199).

Deposition of B. F. FIELD:

Speaking of an interview between defendant, S. C. Field, G. B. Field, and witness, about the middle of December, 1847, just before defendant went to New Orleans:

Question. During that interview at Milwaukee, spoken of above, did said Brooks say anything, and if anything, what, of dangers or hazards attending said land warrant business at that time. *Answer.* I heard nothing.

Question. Did any difficulty exist at that time, to your knowledge growing out of the manner in which said warrants had been assigned, and if any, what? *Answer.* I think we had no difficulty up to that time (Record, 242).

Question. Were any of said warrants of Brooks, Field & Co., which you attempted to locate upon lands, rejected at any land office for informality of assignment thereof? &c. *Answer.* There were two or three warrants returned to me on account of some informality, one for want of a witness, I think.

Question. Were any of those warrants so returned to you for irregularity ultimately lost to said Brooks, Field & Co.? &c. *Answer.* I think not.

Question. Were the land warrants so returned cured of the informalities for which they were returned? &c. *Answer.* They all were, I think.

Question. Were the warrants of Brooks, Field & Co., which had been assigned by virtue of powers of attorney, and those which were assigned by direct assignment, received alike at the land offices, or was any, and what, discrimination made? *Answer.* No discrimination was made between them. The power of attorney was examined.

Question. Were any of the land warrants of Brooks, Field & Co. ultimately refused at the land office where they were presented for location? &c. *Answer.* There were none of them ultimately refused at the land office. (Record, 242, 243.)

Deposition of S. C. FIELD, referring to same interview:

69th Question. Did said defendant say anything, and what, at that interview, about danger of loss from warrants assigned by powers of attorney? *Answer.* I do not remember of his saying anything about apprehending such danger. He thought there was no such danger.

70*th Question.* Whas there any such difficulty attending said business at that time to your knowledge? *Answer.* There was no such difficulty, to my knowledge. (Record, 354, 355.)

71*st Question.* Did any such difficulty exist in said business, at any time, to your knowledge? *Answer.* I believe not.

72*d Question.* Did said Brooks at different times in 1847 and 1848, speak to you about the validity or invalidity of the assignment of warrants by powers of attorney, &c.? *Ans.* We, Mr. Brooks and I, had several conversations about them during that time, in which he said they were valid and good; and regretted that we had expended so much money and time as had been previously expended in procuring the personal assignment of the soldiers, &c.

73*d Question.* When and where did defendant say he regretted so much money had been expended in procuring personal assignments by the soldiers. *Ans.* I believe it was at the Milwaukee meeting before referred to.

75*th Question.* Were any warrants of Brooks & Field's ever, to your knowledge, lost to said firm, on account of assignments by powers of attorney? *Ans.* None to my knowledge.

76*th Queetion.* Were any of the locations of said warrants lost to said firm on account of assignment by powers of attorney, &c.? *Ans.* I remember of no such loss. (354 & 355 of Record.)

Deposition of GEO. B. FIELD to 6th interrogatory:

I am not aware that any distinction was made between those warrants having powers of attorney attached or otherwise. I do not know that Brooks & Field lost any locations by reason of warrants having been assigned by powers of attorney. (222, 223 & 224 of Record.)

We rely upon the foregoing extracts to show (1) that Brooks did not believe that there wrs any difficulty on account of powers of attorney; and (2) that there was no such difficulty. His letters to Martin, and the representations made by him to Martin in January and June, 1848, were calculated to fill him with apprehension, and

lay a foundation for the purchase of his interest. The only man that seems ever to have entertained a fear of powers of attorney, was George B. Field, and Brooks instantly rebuked him for it. And the same George B. Field, in his testimony, states that there was never any ground for such fear, and that not a warrant was ever lost on that account.

Brooks says in his letter to B. F. Field, Aug. 12, 1848, that the "apprehensions of G. B. Field had no proper foundation." (293 of Record.)

But if there had been dangers and hazards in said business, as Brooks stated, this would not justify Brooks in defrauding Martin out of the profits which resulted from the business; and the profits in the business were immense.

Brooks seems to think that if he can show there were hazards in the business, though no losses occurred from them, he has made out his case. The only extent to which the proof goes, however, is not that there was danger, but that at one time G. B. Field, a clerk of Brooks, thought there was danger, greatly to the annoyance of Brooks. The deposition of B. F. Field states that the fears of G. B. Field related to a particular batch of warrants. (261 of Rec.)

III.

1. We have shown herein at length, and shall not repeat, that the Fields entered land with the warrants of the firm, under the direct orders of Brooks, and that he, and not G. B. Field or S. C. Field, was to blame for it; and that if the assets of the firm had, on the 28th day of June, 1848, come to consist, as he stated to Martin, of wild lands, that is precisely what we have charged in the bill, and what the facts show, he intended they should consist of, that he might use the argument with Martin to induce him to part with

his interest for nothing. But were said lands unsaleable, as Brooks says he stated to Martin they were? That they were not unsaleable, but were choice lands, appears from the fact that Brooks ordered G. B. Field and S. C. Field to keep two, three, or more, competent, trusty persons constantly employed in selecting the best lands for entry, and they obeyed his orders. (Record, 271, 272,-418, 419.)

2. On the 4th of April, 1848, nearly four months before the 28th of June, G. B. Field (Record, 246) wrote Brooks that the sales of land amounted, in his department alone, to $30,000, and that he thought that through the sales made by S. C. Field, they amounted to the original investment, and that there would be a rush for lands as soon as navigation opened.

3. Books 1, 2, 3, 4 and 7 on file, and the book of "Locations and "Sales" on file, and stated correct by the Master, show fully $50,-000 worth of lands had been sold up to the 28th June, 1848. (See Books.)

4. The statement of the condition of the business on that day, hereinbefore made, shows that $67,369, in cash and bills receivable, had then been received from sales of lands and warrants, and if Brooks has correctly stated the amount received from the sale of warrants at $6,000 (Record 67 & 68), then the sales of land alone on that day, amounted to $61,000.

5. On the 28th day of November, 1848, just five months after the sale, the report of the Master (Record 615 & 616) shows that, including cash and bills receivable for lands sold, and allowing six thousand dollars, the amount stated in the answer as the sum received for warrants, there had been lands sold to the amount of $77,000. (See Record, 615 & 616.) The whole sum received was $140,090, in cash and bills receivable. Deduct amount received from Martin, $57,000, and $6,000 from warrants, leaves $77,090.

This does not look as though the sale of lands was dull and slow. On the contrary, there was a great emigration to Wisconsin, and there was a perfect rush for lands, as the sales show, all of which Brooks knew.

That Brooks did not believe what he stated to Martin at the time of this sale, about the prospects of the sales of lands; and the money that was thus being realized from the business, appears from his letters to B. F. Field and G. B. Field, June 19th, 1848, just four days before he says he met Martin in Pittsburgh. To the former he says: "I hear from George you are doing a good business" (Record 290). To the latter he says: "I learn that Mr. Francis-"cus has been informed by his house that our receipts are $12,000 "per month. I have learned from a variety of sources that our "receipts are very great." (Record, 289). "I cannot think of any "one but you, (or words to this effect), through whom Mr. Francis-cus could "obtain any knowledge of what we are doing." (Record 289). We also refer to the letters of Brooks to B. F. Field, of July 1st., 13th and 31st, 1848, showing that he did not expect the sales of land to be dull and slow, as he says it was perfectly apparent to both him and Martin they would be. (Record, 291, 292, and 330)· Also to to the money Brooks had, just before the 28th of June, 1848, received of B. F. Field. (Record, 290.) On 21st of June he received $6,809.98 in coin; and May 1st, 1848, $4,000, (Record, 325); and May 31st, $1,100. (Record, 324). Immediately after the sale, July 13th, 1848, $2,000, (Record, 330); July 24th, 1848, $4,126.10, (Record, 331); September 5th, 1848, $3,388.96. (Record, 331.) Including what Brooks had received immediately before and after the sale, we cannot see the necessity of borrowing money to pay Martin $15,000.

7. The easy financial condition of Brooks at that time, may also be seen from the fact that in June, just before the sale, he sent B. F. Field nine warrants to be located, when he could have sold them for $1,500 cash. (Record, 288, 290 and 324.) Also, July 1st,

1848, he sent B. F. Field thirteen warrants, which he could have sold for $2,200 cash. (Record, 291.) Also, when Brooks went to Wisconsin in July, 1848, he took with him and left with B. F. Field for location, twelve warrants, which he could have sold for $2,100. (Deposition of B. F. Field, Record, 244.) Also, before said sale by Martin of his interest, on the 22d of April 1848, Brooks left with G. B. Field, for location, sixteen warrants, which he could have sold for $4,000 cash. (Record, 1054 & 1055.)

8. The easy circumstances of Brooks, both before and after this purchase, are also seen from what he did. In February, before the purchase, he limited lands to $200 the quarter. (Record, 283.) Immediately after the division, he limited the price of land to $220. (Record, 294 & 295.) March 14th, 1849, four months after the division, he fixed the price of lands at $225, $230, $240 and $250 per quarter. (Record, 295.) On the 22d August, 1849, he fixed the price at $300 per quarter. (Record, 326.) In November, 1852, he fixed the price at $3 per acre, $480 per quarter. (Record, 869.) In July, 1853, $3.12½ per acre. (Record, 875.) In November, 1853, $4.16 per acre. (Record, 877.) In November, 1854, $5 per acre. (Record, 884.) In February, 1855, $6.50 per acre. (Record, 886.) In June 1855, $6 to $10 per acre. (Record, 887.) In March and April, 1856, $10 per acre. (Record, 894.) In November, 1848, Brooks loaned S. C. Field $1,330. (Record, 483 & 486.) In November, 1849, he loaned B. F. Field, $1,089.90. (Record, 330.) In Nov., 1850, he loaned C. D. Cole $1,038.38, which he has since held on interest. (Record, 880 and 882.) He permitted S. C. Field to retain, on twelve per cent. interest, some $5,000 which he had collected, from the Fall and Winter of 1848, till October, 1850, and August, 1851. (487, 488 and 489.) In 1850 and 1851, he purchashed a large mill property and assumed the payment of a mortgage on it for $8,000. (Record, 487, 488 & 489.) He permitted H. H. Gray to retain near $2,000 from 1848 till 1856, at twelve and twenty-five per cent. interest. (Record, 692, 693, 694, 1046 & 1047.) In 1853, he purchased the large A. L. Field

farm for $10,000. (Record, 90, 91, 92, 93 & 94.) In 1855, he purchased, with L. G. Fisher and R. H. Mills—he retaining a half interest—$18,000 worth of land, at from $5 to $11 per acre. Record, 90, 91, 92, 93 & 94.)

IV.

The emigration to California, which Brooks says was talked over between him and Martin on the 24th and 28th of June 1848, and which was then effecting the price of, and demand for, lands, and was a notorious fact, rendering it perfectly apparent to both him and Martin, that the sales of lands must be dull and slow, and prevent their selling in large quantities for ready pay, is in good keeping with the balance of the statements he says he made to Martin at that time. We will not comment upon it. It speaks for itself.

It is a notorious fact that gold was not discovered in California till the Summer of 1848, and that the news of the discovery did not reach the States till late in the Fall of that year, and that the emigration did not commence till the Spring of 1849. We refer to the following depositions as to the time when the emigration commenced:

S. C. Field,	Record, 362
B. F. Field,	" 248
J. M. Keep,	" 189
H. Cheny	" 190
Jesse Moor,	" 191
E. R. Wadsworth,	" 191

And yet he says, it was, at the time of the purchase, draining the country this side of the Rocky Mountains of its inhabitants, and the people of their change, and it stands in the answer as one of the principal reasons why Martin sold his interest without consideration. "*Falsus in unœ falsus in omnibus.*"

But Brooks now says it was ship fever, and not California, that was doing all these things. But whoever heard of ship fever, or any other kind of fever, having such attractions as are here attributed to California? Was ship fever ever known to attract the attention and absorb the change of the people of the great Northwest, this side of the Rocky Mountains?

V.

Does the bill, or the answer, state the truth as to who made the proposition to buy or sell? We shall call on Brooks to answer this question, which he does at a time when he had no object in making a false statement.

EVIDENCE.

Letter from defendant to Jos. Lake & Co., January 16th, 1849.

Defendant speaking of this transaction says: "I therefore, in June, when Mr. Martin was in Pittsburgh, made him a reciprocating proposition to buy or sell in which it was stipulated that the purchaser should release and indemnify the other from and against the debts of the company. I made the offer in the hope of inducing him to buy, but he chose to sell." (Record, 565.)

Defendants letter to Lake & Co., January 28th, 1849.

He says: "Thus prefacing, I proceed to say in reference to my settlement with Martin & Co., and my purchase of the interest of Mr. Martin in the land claim operation, that, as I stated in my last, I made in June last to Mr. Martin a reciprocating proposition to buy or sell our several interests in the concern. The amount I proposed to give or take was $3,000, the purchaser to pay this sum down or within thirty or sixty days, and to release the seller from, and indemnify, against the debts of the company and against ultimate loss. Mr. M. chose to be the seller, and I paid him the consideration as stipulated." (Record, 566, 567.)

VI.

We shall also permit Brooks to decide the truth of the bill, or of the answer, as to whether he then believed Martin to be able to purchase his interest in the business, pay him $3,000 cash, and giving him security for the obligations of the firm, then outstanding.

EVIDENCE.

1. The answer admits he knew of the failure of Lake & Co., and the consequent failure of Martin & Co. (59 of Record.)

2. Defendant's letter to Jos. S. Lake & Co., June 2, 1848, says: "Fearing, and knowing, as I do, that individual responsibility of "the parties" [meaning Brooks, Field & Martin] "could effect only "myself, I feel a great anxiety," &c. (288 of Record.)

3. Defendant's letter to Lake & Co., January 16, 1849, says:— "After the failure" [meaning, of Lake & Co. and Martin & Co.] "I furnished all the responsibility for any loss that might occur." (565 of Record. Answer, 64 of Record.)

4. In the answer, defendant says: "While the failure of Lake & "Co. and Martin & Co. left said Brooks, Field & Co., with defend- "ant alone, of that firm, with any property responsibility." (53 & 54 of Record.)

5. Answer, says: "But if George B. Field did intermeddle with "the affairs of Brooks, Field & Co., by ordering remittances made "to a failed broker or banker in New Orleans or New York," [meaning Lake & Martin] "then he admits," &c. (76 of Record.)

The depositions of W. S. Courtney, Ira B. McVay, Alexander McBean, William H. Williams, all show that at that time Martin was harrassed to death's door by importunate creditors, and had no monetary credit. The answer of defendant, and the letters above quoted, show that Brooks knew all this. (163, 164 & 182 of Rec.)

It is worthy of remark, that in all the pages Brooks devotes to this interview, he does not attempt to show why it was necessary for either himself or Martin to buy or sell his interest at that time, and why he should have forsaken Martin at the only time when Martin needed his aid and friendship. It is also remarkable, that Brooks does not show or attempt to show, how his strong opposition to buying Martin's interest in the business, which he says he manifested on the 28th of June, 1848, was overcome.

VII.

Did Martin come to said meeting ready to sell? and did he bring with him the accounts of Martin & Co. against Brooks, Field & Co., ready for a settlement, as Brooks states in his answer? This question might be answered by a statement of the fact that Martin, as the bill states, and the deposition of Franciscus shows, had left New Orleans on the 6th of April, 1848, in great haste, immediately after hearing of the failure of Lake & Co., and had no time to make up and prepare the accounts of Brooks, Field & Co. Also, that if the accounts had been made up by Martin, they would have contained charges of interest for the 12 months or near which said firm had been using Martin's money; whereas, no such charges of interest are made in said accounts. But we rely upon the better evidence, in the letters of Brooks, to disprove these statements of the answer.

In the letters of Brooks to Jos. S. Lake, January 16 and 28th, 1849, when he had no object in view but to collect from Lake & Co. a debt of $106, Brooks, in each letter, states that said accounts were made out by the clerk of Martin, in May, 1848, and that Brooks received them from him at that time. (Record, 565, 566 & 567.) The bill states, and the answer admits, Brooks visited New Orleans in May, 1848, in the absence of Martin; and these letters show he obtained said account at that time, and the absence of Martin when they were made up, accounts for no charge of interest.

VIII.

Did Brooks state the truth to Martin when he informed him, during the negotiation for the purchase of his interest, that he could not pay the $15,000 of notes held by Martin, without borrowing, and that he could not expect to pay the liabilities of the firm from its assets, in one or two years?

1. We shall show herein that Brooks, at that time, had a perfect knowledge of all branches of said business, and knew the amount and value of its assets; and we have shown herein that the cash, and bills receivable of said firm, without including the lands then on hand, which were 46,553 acres, exceeded all the liabilities of the firm, in the sum of $25,150.14. (See statement of the condition of the business on the 28th of June, 1848.)

2. The Master reported the cash received in said business, from all sources, and the bills receivable then on hand, on the 28th of November, 1848, just five months after the purchase, to be $140,090, and the cash alone to be $115.570.32; and all the expenditures, of every kind, in said business, including all liabilities yet, at that time, unpaid, to be $122,831.59, and that the money had been received by said firm, to pay all of said liabilities, within $7,261.27; and that to pay this, there was then due on unexpired contracts for land sold, $24,519.97, and land on hand unsold, 40,335 $\frac{97}{100}$ acres, worth at that time, $100,000. (See first report of Master, 615 & 616 of Record, and second report, 1,132 of Record, in which he makes the same statement as to the cash received, and the amount then paid.

After considering these facts, what shall be said of the statement Brooks made to Martin, that the liabilities of said firm could not be paid in two years? (Record, 62, 79); and of a statement, made elsewhere in the answer, that but for the unusual and unexpected demand for lands, some four or five years after said purchase, Brooks could not have paid the liabilities of said firm from its assets in ten or fifteen years, if ever? (Record, 79.)

It may be proper here to state, that the reasons why the assets did not foot up, in dollars and cents, in the schedule of division and memorandum of settlement, executed in the Fall of 1848, what we and the Master have shown they were, are the following:

1. The schedule of division and memorandum of settlement do not set forth any cash or any warrants then on hand. They state that cash and warrants were on hand, and that they were to be divided, one-third to Brooks, one-third to Field, and one-third to Martin; but do not state the amount of either. It was an easy matter for Brooks to put the two-thirds, set off to him and Martin, in his pocket, without leaving an account of them, and for Field to do the same with his interest; and there was a design in it all on the part of Brooks. (Record, 455, 470, 481 to 483.)

2. The schedule of division and memorandum of settlement divide nothing but lands and claims on lands, which means contracts for lands sold. Those exhibits show, and all the Fields depose, that, instead of estimating the lands at government prices, or at their real value, Brooks and Gilman, who controlled near a three-fourth interest in the assets, had them valued at what they cost the company. They did the same with the bills receivable, or claims on lands. These bore interest at the rate of 12 and 25 per cent. per annum, and the land for which they were given was held as security for their payment, and they would have been a good investment at par; but they, too, were set off at the cost of the land. (Record, 455 to 470, 481 to 483, and the depositions of S. C. Field, 358, B. F. Field, 244, and G. B. Field, 225.) The object of Brooks in all this, was to prepare for his defence, if Martin should ever discover the fraud, by showing a low estimate of the value of the assets he had bought of Martin. No other reason can be assigned for placing a false estimate on the value of the assets. But, at this false estimate, and without setting forth the cash and warrants, the interest of Martin in the lands, and claims on lands, amounted to the sum of $20,925. (Record, 481.)

At this division of lands Brooks aimed to practice two deceptions: 1st. to deceive Field as to the purchase from Martin, and 2d,

if Martin should ever suspect the fraud, to have the assets placed at a low estimate, so that it might appear he was not badly defrauded. The sale from Martin to Brooks was concealed from all the Fields till 1856, for fear they might, if they knew of the sale, give Martin some information of the fraud and of the business.

IX.

We now come to the important inquiry, had Brooks ever, up to this time, rendered Martin an account of the business, and did he render him one at this meeting; and had Brooks ever received an account of the business from the Fields'? Brooks nowhere pretends that, previous to this meeting, Martin had ever seen anything purporting to be an account of the business in any of its branches. No statement of any kind in writing had been submitted to him. He states, it is true, that Martin had all the information respecting the business that he had, but fails to show when and how Martin obtained the information. He had prevented the Fields' from communicating with Martin, and Martin did not, therefore, get his information from them. Brooks does not pretend that he had given the information by letter, and if he had so pretended, the letters are on file, and speak for themselves. There can not be found in one of the letters from Brooks to Martin, commencing on the 30th of July, 1847, and ending in September, 1856, one statement of the warrants obtained on claims, the warrants purchased, the warrants located, the places where located, the description of the lands, the cash received from sales of warrants, the lands sold, the cash received from sales of lands, the cash expended, the cash on hand, the lands sold on credit, the obligations of the parties to whom sold, how secured, the time they had to run, the rate of interest they bore, or any one item of an account of said business. We refer to said letters, on pages of record 269, 273, 275, 276, 280, 281, 282, 283, 284, 285, 286, 287, 288, 292, 297, 298, & 299. That Martin had been trying to get an account from Brooks, and that Brooks had declared his inability to render him one, owing to his not being able, as he stated, to get one from the Fields, appears, 1st, from his statement in answer, record 49, 58, 67, 71; 2d, from the

letter of Martin to Brooks, March 15th, 1848, made an exhibit by Brooks (Record 524 & 525), in which Martin complains of being in perfect darkness respecting the business; and, 3d, from the answer, (Record 71, 87 & 88), and the letter of Brooks to Martin, March 20th, 1848 (Record 284 & 285), and, 4th, from letters of Brooks to Martin in the first of which he states he has not yet received an account from Field; and in the second, though he does not pretend to have obtained a full statement, he says that he has, with much labor and exertion, obtained as full a statement as was practicable. (See record 280 & 287.) From September, 1847, to the 24th of January, 1848, Martin did not see Brooks, and could not, therefore, between those times, have received an account from his hands. In New Orleans, January, 1848, he admits he did not render him an account, for he says he had none to render. From that time till June 24th, 1848, he did not see Martin. But he says that in New Orleans, in January, 1848, he gave Martin such a statement, verbal, as he had received from the Fields, and we have already shown the whole of what he says he did state, to be untrue. An account of the business, to have informed Martin or any one else of its condition, should have contained, at least, all the items which we have just named as not being in any of the letters of Brooks to Martin, and it is perfectly preposterous to talk about giving such an account in a verbal conversation. How long would the number of warrants, the legal descriptions of 70,000 acres of land, the details of sales for cash and on credit, be remembered, without being submitted in writing?

The defendant has not attempted, even in this answer, which shows more bravery than integrity, to say that Martin knew the condition of the business at the time of this sale. It was too much, for even the defendant, to attempt to show that Martin would have sold thirty-six thousand dollars worth of assets for three thousand dollars. So he attempts to establish that martin and himself were n equal ignorance; and here again he lays all to the negligence of the Fields, in not accounting to him, so that he could fully inform Martin of the value of his, Martin's interest.

Defendant's answer says:

"Defendant had, just before his visit to New Orleans, visited Milwankie, Wisconsin, to meet S. C. Field, and brother, George B. Field, for the purpose of obtaining any moneys they might have collected from said business of Brooks, Field & Co., and of getting a detailed statement of their doings in said business. But defendant was unable to obtain such statement for the reason, as they stated, that the books and papers containing their accounts were at Beloit and Sheboygan. Though defendant regretted that he could not obtain any other than what professed to be a general statement, verbal, and notwithstanding what has been hereinbefore stated, yet defendant did not then believe that said Field would be guilty of downright intentional dishonesty or rascality." (49 of Record.)

"Defendant further answering states that, it is true that complainant had never, up to the time of this sale, obtained a perfect accurate account and statement of the affairs of said Brooks, Field & Co., but so far as defendant had obtained them or had knowledge of them, or so far as complainant chose to examine the details thereof, complainant was fully informed by defendant; and defendant states that it is not true that complainant was unable to obtain such account and statement, so far as defendant had knowledge and complainant required. (67 of Record.)

"From the commencement of selling warrants of Brooks, Field & Co., in August, 1847, to April 1848, defendant had been unable to obtain any definite or detailed statement of the operations of either said S. C. Field or George B. Field in their disposition of the warrants of said Brooks, Field & Co. In the latter part of April, 1848, defendant went again to Wisconsin for the purpose of obtaining such statements. At this time defendant met the three Field brothers at Sheboygan and spent ten or twelve days in endeavors to obtain the statements and information he required, and in assisting in making out such statements. At this meeting, a number of warrants could only be accounted for as being lost or mislaid, and in the statement of S. C. Field, there was an annoying absence of dates. Another annoying feature in this statement was the failure of the moneys shown by them to have been received

from the business of said Brooks, Field & Co., and ready to be paid over, to realize the expectations that had been raised by previous letters of said Field to defendant. Still, many plausible reasons were given by said Fields as excuses for not having furnished previous statements, and for the imperfections of these, which defendant tried to receive and regard as satisfactory." (58 of Record.)

"After defendant's visit to Sheboygan, in April, 1848, as hereinbefore stated, where he obtained the first detailed statement from said Fields, or either of them, of their doings in the said business of Brooks, Field & Co., defendant had no opportunity of communicating with complainant until the interview aforesaid, when defendant, as hereinbefore stated, showed complainant said statements, and offered any explanations complainant might desire and that defendant could give; but complainant seemed to have little taste or inclination for examining the details." (Record, 71.)

Now if we were to stop here, and concede to the defendant that his theory of the case, as sworn to by him in his answer, were true, yet this sale would have to be set aside. If it had been perfectly honest, and both Martin, who sold, and Brooks, who bought, were equally ignorant, yet it is not permitted to the defendant to profit by his own ignorance, any more than by the ignorance of Martin. Brooks was entrusted by Martin with the entire charge of the business. His interest, and that of Martin, was nearly three-fourths of the whole, and, with the authority of Martin vested in him, he could have done, and did do, as he pleased. It was, therefore, his duty to know all about the business, and to have accounts of it, and to discharge any agent who would not account to him.

The testimony we shall cite, most clearly demonstrates the falsehood of the answer; demonstrates that Brooks, on the 28th June, 1848, had an accurate, detailed, perfect knowledge of the business; knew what was the value of the assets, and that, too, from regular, stated accounts, furnished him by the Fields.

EVIDENCE.

1. The letter of G. B. Field to the defendant, Sept. 18, 1847,

contains a statement of the warrants he had sold, and cash he had on hand for Brooks, Field & Co. No lands had yet been entered for said firm. (Record, 333.)

2. The letter of G. B. Field to the defendant, Oct. 4th, 1847 states that all the warrants of said firm, received by him, had been sold, and he gives the average prices of those sold, the amount of cash on hand, "subject to defendant's order," and a full statement of the prospects ahead, and his views of operating, which were submitted to the defendant for his approval, but whieh the defendant had anticipated in his letter of the 20th September. (Record, 271, 334.)

3. On the 29th October, 1847, Geo. B. Field wrote defendant, remitting $2,300, giving the number of warrants received, and a full statement of the prospects of the business. (Record, 337.)

4. On the 5th November, 1847, G. B. Field wrote defendant, stating the number of acres of land he had located for the firm, the aggregate of the sales of warrants and lands to that date, the amount of cash received, the amount of deferred payments, the amount of weekly receipts, and a full statement of the manner in which he was conducting the business, under the order of defendant. (Record, 336.)

The letter of said Field of the 18th September, was received by the defendant the 30th Setember, and "met his views." That of the 4th October was received the 1st November, and "he was well "pleased with it." The letters of the 29th October and 5th November were received the 18th November, and answered on the 21st November, and defendant expressed himself "well pleased "with the account of said Field's progress and prospects." All the above accounts were received by the defendant, before visiting Milwaukee, in December, 1847. (Record, 272, 274, 275.)

In the letter of G. B. Field to the defendant, Oct. 29, said Field informed defendant he was preparing "a full statement of the

business, showing the money received, the land entered, the price each warrant brought, &c., &c." In answering this letter, on the 21st November, defendant tells him to have the account made up, and to meet him in Chicago, or write him there, and to have money and account ready. (Record, 275, 337.)

5. On the 15th November, 1847, G. B. Field wrote defendant enclosing $1,000, and on the 19th said Field wrote defendant and expressed gratification at the prospect of seeing defendant. (Rec. 338, 339.)

On the 6th December, 1847, defendant wrote G. B. Field from Chicago, thus:

"I arrived here yesterday, and intend to leave to-night for Beloit *en route* for Milwaukee and Sheboygan, in one of which places I hope to meet you, duly prepared with funds, and ready for more warrants. I go by Beloit in hope of meeting there S. C., and shall be disposed to make as little delay as possible. (Record, 277.)

Defendant is here on his way to Milwaukee, to get the account G. B. Field had promised, and the money in his hands. He goes by Beloit to see S. C. Field, and get his account, and the money in his hands. S. C. Field and defendant go from Beloit to Milwaukee, and there meet G. B. Field, on the 13th December, 1847. (Rec., 1051, 1052, 49, 57.)

Defendant got from G. B. Flield at that time $3,059.91, and from S. C. Field $550. But did the defendant get the account which G. B. Field had promised to have ready, and which the defendant had written him to have ready, and to get which the defendant had come one thousand miles? The defendant, in his answer, swears he did not, and that he so informed complainant in January, 1848. (Record, 325, 70, 71.)

The reason given in the answer why defendant did not get said account is, that "their books were at Beloit and Sheboygan."

The defendant had just been at Beloit, and could have seen the books of S. C. Field there, and doubtless did. S. C. Field accompanied Brooks to Milwaukee and it is strange that they did not take the books, if they were needed. Brooks's letter to Geo. B. Field, of December 6, shows that the object of Brooks in coming to Wisconsin was to go to Sheboygan. Why did he not go there? Why come one thousand miles, and then, when within sixty miles of his journey's end, stop, and not accomplish his object?

The deposition of B. F. Field says: that after defendant and S. C. Field arrived at Milwaukee, they sent to Sheboygan, and had him, B. F. Field, come to Milwaukee. They would have sent to B. F. Field to bring the books to Milkwaukee, if they had not been there. (Record, 241.)

In the deposition of George B. Field, he swears that the books were at Milwaukee. He further says: that he often rendered accounts to the defendant, and he believes he did at this time. He also swears that he kept complete books of account, which any one of ordinary capacity could understand, and to which defendant had access. B. F. Field and S. C. Field, in their depositions, both swear that according to their recollection, an account was then rendered to defendant. He also says: Brooks was always kept fully advised regarding the condition of the business, both verbally and by letter, from B. F. Field and myself. (Record, 225, 230 & 231.)

There are many circumstances showing that said account was then rendered.

1. Plaintiff's Exhibit 408, is a receipt given by G. B. Field to the defendant at said time, for one hundred and twenty-two warrants left by defendant at that time with said Field. If it had been true, as the defendant swears, that after notifying G. B. Field he was coming for an account, and after coming one thousand miles to get it, and after said Field writing him that he would have it made up, would the defendant, finding said Field had deceived him, and that he would have to go away ignorant of said business, have left

in the hands of said Field one hundred and twenty-two more warrants at that time. (Record, 1051 & 1052.)

2. Plaintiff's Exhibit 409, is another receipt taken by the defendant from G. B. Field, dated April 22d, 1848, for one hundred and seventy-two warrants, which the defendant sent G. B. Field between the 15th of December, 1847, and the 22d of April, 1848. These warrants were sent said Field December 17th, 25th and 31st, 1847; and January 6th and 29th, and February 12th, 13th, 15th 26th and 28th, 1848; and sixteen were delived in person, April, 1847. Now, if it had been true, as the defendant swears, that from September, 1847, till April, 1848, he had been trying to get an account of the business of said Field, and had wholly failed, would he have commenced, immediately after failing to get the account in December, and have continued sending said Field, warrants, up to April 3d. (Record, 1052, 1053, 1054 & 1055.)

3. The letters of defendant transmitting said warrants, are numbered 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 29, and are themselves strong proof that the defendant did get said account in December, not because they speak of said account, *but because they do not.* Before going to Wisconsin, defendant had spoken of said account and had been anxious to have it (Record 275 & 276); but after said visit to Wisconsin, and his parting with G. B. Field on the 15th of December, 1847, the defendant does not, in any of his letters to said Field, refer to an account which he did not get, or to one indeed that he did get. There is, on his part, a studied silence on the subject, and it was necessary there should be, for the defendant had just informed complainant in New Orleans, that he had not received, and could not get said account, and it would not do to write that he had. From the 21st November, 1847, till the 20th March, 1848, defendant does not name an account to G. B. Field, or complain that he has not received one. (Record, 275 to 285.)

6. But we have positive proof on this subject. The defendant made the letters of G. B. Field exhibits in this case, subject to our objections to them.

On the 10th of January, 1848, G. B. Field wrote defendant thus: "Your favor of December 31st, came duly to hand; in consequence of my wife's continued illness I have been unable to go to Sheboygan but once and then to stay but a few days. We have pushed forward locations as rapidly as we could with safety—have probably entered about one hundred quarter sections since your *account rendered.* I requested Mr. Cole to prepare a statement of the business for December, which I will forward you as soon as I get to Sheboygan, which will be in about three days. (Record, 339 and 340.)

This letter shows that there had been an "account rendered," and that said "account rendered" embraced the the business up to December 1847, and that the account for December would be made up in a few days. Why say for December? Why not include September, October and November, 1847? Because up to December an account had "been rendered," and up to that time defendant knew all about the business. The subsequent letters of G. B. Field to defendant, also prove the rendering of the account at that time, by accounting for the business only after that time, or after defendant "*left.*"

On the 5th February, 1848, G. B. Field wrote defendant thus:

"We made one hundred eighty locations in the last two weeks, and splendid ones they are. I will guarantee the sale of all in four months if navigation opens as soon as we anticipate. We have had a very favorable Winter for examining lands. There has not been any snow here since you left. Next week I am to have a full settlement with Cole preparatory to my going to St. Louis. I will then send you the account of business up to the middle of this month." (Record, 342.)

On the 3d March, 1848, G. B. Field wrote defendant thus:

"Mr. Cole has been absent about two weeks and it puts me back very much in making my statement of Brooks & Field's business, but as I am quite sure you will be pretty well satisfied with matters

as they have been managed. Our sales since you *left* in December have been, except some seventeen or twenty, all payable within a year, and ten thousand dollars worth at an average of $185, exclusive of Cole's commissions by the 1st September next, principally 1st July and August." (Record, 344.)

On the 10th March, 1348, G. B. Field wrote defendant thus:

"Your favor of 26th has just arrived covering sixteen warrants; healthy and fine looking ones they are, and will be used instanter. They could not have come more opportunely, neither could the news of your intention to visit us this month, as it relieves me from the necessity of making out a long account of our doings since you *left*; besides I want your advice at this juncture—it will be very easy to save or lose five thousand dollars according to the plan we act on the disposition of lands." (Record 345.)

All these letters speak of the business, and of an account, after the defendant "*left*." To show that all these letters were received by defendant, and that the defendant did not correct the error of G. B. Field, in supposing he had received an "account," up to December, and that he wanted one only after that time. (Record, 281, 282, 283 & 284.

And yet notwithstanding the fact that the defendant had said account with him, and had with him said exhibit 408, which was an account signed by G. B. Field of the warrants defendant had left with him, defendant informed Martin, in January, 1848, that he had wholly failed in getting an account of any kind of said G. B. Field, and that he was compelled to rely upon a "mere statement verbal." (Record, 49.)

G. B. Field not only rendered the defeneant a full account of the business in his charge, up to December, 1847, at said meeting in Milwaukee, but G. B. Field at said time agreed with the defendant, that he would, thereafter, render the defendant monthly accounts. In proof of this, see the letter of G. B. Field to said defendant, April 4th, 1848. (Record 346.)

1633

In compliance with this promise, G. B. Field sent the defendant an account for December, 1847, and a part of January, 1848. See letter of G. B. Field to defendant, January 19th, 1848, in which he says:

"The enclosed account does not show the business done up to this time, as we have not received returns from the land office of about 13,000 acres sent up to be located last week, besides which I have sold thirty warrants on credit, ten of which at $400 each payable in three and four years, being pre-emptions and twenty-two for $180 each, payable 1st of July and 1st of August next, to secure the payment of which the land has been located in the name of Benjamin F. Field, and a bond and mortgage given on other property worth $2,000. This I regard as a first rate, sale as I can probably, if necessary, get the paper or securities discounted in about three months." (Record, 340 & 341.)

This account was full and in detail, except the items named by said Field, which were stated with as great particularity, as the circumstances would admit of. Defendant received the letter containing this account, on the 12th of February, 1848; but in answer to said letter, defendant does not allude to the account "enclosed," nor say it was not full and complete. (Record, 281.)

Not till the 20th of March, 1848, does the defendant, after leaving Milwaukee in December, 1847, ask G. B. Field for an account, and then he asks him for an account promised in the letter of the 5th of February, which had not been received. We call attention to a letter written complainant by the defendant on this same 20th March. Defendant had not sent complainant copies of any of the letters of G. B. Field to him in which said Field had written him about the flattering prospects of the business, and in which said Field had sent defendant accounts of the business; but the first letter G. B. Field sent defendant apologising for not sending an account promised, the defendant copied and sent to complainant, accompanied by his own letter, of the most alarming kind, conveying

the idea that his efforts to get an account of said Field, were just as unavailing as they had been before his arrival at New Orleans, in January, 1848. (Record, 284 & 285.)

But the defendant, in this extract from the answer, which we have proved false, includes the name of S. C. Field with that of G. B. Field, in stating he had not received an account in December, 1847. But the business of Brooks, Field & Co., previous to December, 1847, so far as the selling and locating of lands and warrants was concerned, had been done exclusively through G. B. Field, acting under the orders of the defendant, so that when defendant got an account of said business from said G. B. Field, he got an account of the whole business of locating and selling. S. C. Field had thus far had no connection with that part of the business. As has been hereinbefore fully shown, previous to December, 1847, S. C. Field had been employed in traveling and getting assignments, and had not been engaged in locating or selling warrants and lands. For this reason S. C. Field had no account of this kind to render. All he had done so far in said business, was to purchase thirty-five warrants and pay balances to soldiers and get assignments. He paid over to defendant the money in his hands; but though defendant was with him at Beloit and Milwaukee for some ten days, and could have examined his books and have obtained a detailed statement of the warrants he had bought and the balances paid, he appears not to have got an account, preferring to get no account, that he might be able to state to complainant that he had not, and could not, get said account. But after parting with Field, he, on the 19th of December, 1847, wrote to Field to make out said account. (Record, 431.)

In accordance with this demand, S. C. Field made out said statement, and sent it to the defendant, late in December, 1847, as appears from the following evidence.

The letter S. C. Field to defendant, January 11th, 1848, says:

"I leave to-morrow morning for Beaver Dam, where you will

please direct letters. Presume you have by this time received the account or statement I sent you from Beloit, soon after the receipt of your last from Peru. (Record, 555.)

Defendant arrived in New Orleans the 24th of January, 1848, and received on his arrival, a letter from G. B. Field of the 20th of December, 1847, and the letter of S. C. Field at the same time. (Record, 280.)

On the same matter S. C. Field wrote defendant, March 28th, 1348, in reply to defendant's letter:

"I was truly glad to recognize your your well known hand in the superscription of two letters I received by this mornings mail, but was much surprised at some of their contents on opening them. That you should not have received the statment of matters, I sent you at New Orleans is very singular, and a circumstance I very much regret on several accounts; it was duly forwarded as I wrote you, and with it a request for your advice on matters touching thd location of improved lands, a reply to which I have long looked for. Would now forward you another statement of account, but suppose I shall see you soon in person; will do so if you wish, however." (Record, 554.)

The deposition of S. C. Field, (Record, 391 & 346), is positive, showing that this account was made out and sent to New Orleans; and two of defendants own exhibits show such was the fact; and the letter of G. B. Field to defendant, April 4th, 1348, says, S. C. Field told him he had made out a tabular statement of his account with the company. And yet, in the face of these facts, the defendant told the complainant, in New Orleans, January, 1848, (see answer), that he had not received, and could not get, said account. It is true the defendant says he did not receive said account from S. C. Field, but he received letters from G. B. Field, written about the same time, and it was an eaasy matter, and a part of the scheme of the defendant, to deny the receipt of this account, as well as that

from G. B. Field, which is so plainly proved on him, and which in his letters he does not deny the receipt of, though he does in his answer. There are two reasons why S. C. Field should be believed on this subject, before the defendant:

1st. He is a disinterested witness; and

2d. He is not shown to have sworn falsely in this case; in both of which particulars he has the advantage of the defendant.

But, beside the account which S. C. Field made out and sent the defendant, in December, 1847, his letters to the defendant, in the months of August, September, October and November, 1847, are themselves full statements of all the operations of said S. C. Field, in getting assignments and purchasing warrants, the same as the letters of G. B. Field during said months. We cite the letters of S. C. Field by their numbes: 322, 323, 317, 336, 319, 321, 324, 325, 326, 335, 345, 327, 327, 318, 328, 333, 332, 329, 331, 330, 337, 344, 338, 343, 342, 300, 340, 339, 341. Any one of the letters of S. C. Field or G. B. Field to the defendant, contains more information about the business of the firm, under their charge, than all the letters the defendant ever wrote the complainant, respecting said business, and all of said letters from said Fields show said business to have been, during the whole time, in a most prosperous condition. (Record, 525 to 563, and ~~271 to 300~~.) 338, to 347.

But we now call attention to the account the defendant received from the Fields on the 27th of April, 1848. If this account was not full and complete, it was because the defendant did not wish it to be so; for the defendant had all the facilities for making a full and complete account of the whole business.

1. Defendant, S. C. Field, G. B. Field, B. F. Field, C. D. Cole and G. C. Cole, the parties who had been engaged in the various branches of the business, were all present. (Record, 58.)

2. Defendant had his own account of the warrants he had obtained from the department and had purchased, and had also the receipts, 408 and 409, and other receipts, which he had taken from the Fields for warrants. (Record, 1051, 1052 & 1053.)

3 The full and complete books which G. B. Field swears were kept of all their operations in said business, and which he says any one of ordinary capacity could understand, and from which a complete knowledge of said business could be obtained, were present, and there is no pretence on the part of the defendant that they were not. (Record, 223, 230 & 231.)

4. G. B. Field had been at the expense and trouble, as B. F. Field swears, of making out a complete map with all the lands of Brooks, Fields and Co., painted in a lasting manner upon it, showing the sections, towns and ranges, and the number of each warrant locating each tract of land. This map was also present and is yet in the hands of G. C. Cole of Sheboygan. (Record, 253.)

5. All bills of expenses, incurred by said G. B. Field and his agents in the transaction of the business, made out in detail, were also present at said meeting, and are now on file in the case, as then settled. See bills on file in book—"Martin's Exhibits."

6. All the full and detailed letters of S. C. Field and G. B. Field to the defendant, and the accounts received by defendant from said Fields in December and January previous, were also in defendant's possession. The defendant does not pretend that there was any book, paper, account or document wanting to make out a perfect account.

7. Defendant states that he spent ten or twelve days at Sheboygan at that time with all the parties, assisting to make up said account, and G. B. Field swears that at said time, defendant examined the books and the business "critically." (Record, 58 & 223.)

Now, with all these facilities for making an account of the whole

even if we could not prove what he says to be false. He must show, not simply assert, that he acted honestly and fairly.

All the books, papers and documents, required for making such an account, were in his possession when he made his answer, and are now on file in the case. From these, the complainant has made up the account of the business on the 28th of June, 1848, as now presented. If the defendant had acted honestly, and not fraudulently, on the 28th of June, 1848, an account of the business on that day would have accompanied his answer, as we demanded, and he would now insist that said account should be made as a matter of justice to him. But instead of doing this, the defendant has made every effort to prevent the making of an account showing the condition of the business on that day, and refuses to produce the account which he says he then presented to complainant. That we demanded this, and the other accounts the Fields rendered him, (see Record, 686, 687, 688, 689, 696, 697 & 698), but he refused to produce, and did not produce, these or any other accounts of the business previous to the sale. (Record, 609, 610, 768, 773, 774, 775, 776, 777, 778 & 779.)

It is indeed a new era in equity jurisprudence, if a trustee, endeavoring to sustain a fraudulent purchase of the trust property from the *cesti que trust*, is permitted to with-hold all accounts and information respecting the property, throwing the burthen of proof entirely upon the *cestui que trust.* And now that the *cestui que trust* has succeeded in ferreting out and establishing the fraud, the trustee throws himself upon the indulgence of the court, and asks that a favorable ear may be lent to every captious objection he can make to the account the *cestui que trust* is enabled to present. At this point the maxim "*Omnia praesumunter Contra Spoliatorem*," applies to the defendant with all its force.

But, we are now inquiring only about the account of the business on the 28th of June, 1848. It is certain Martin cannot have that account or it would be presented to the court. Viewed in any and all lights, it would be for his interest to present it if he had it.

1641

If it was a true account of the condition of the business on that day, he would present it to show that he was unable from mental and physical weakness to examine it at that time, and that Brooks took advantage of him, to buy his interest without consideration. If it was a false account, Martin would present it to show the unfaithful conduct of Brooks in his fiduciary relation.

Knowing that his refusal to produce this account, or to make up one himself, would have an unfavorable effect on the mind of the court, Brooks, in his deposition (record, 696, 697 & 698), intimated that books 1 and 3, on file for reference, were the accounts he received of the Fields in 1848.

It is very certain that these books, if Martin saw them on the 28th of June, 1848, would not have shown him the condition of the business. Bearing in mind that Martin was, up to this time, in total ignorance about the business, an account, to have enabled him to learn the value of his interest, should have shown:

1. The money advanced by Martin to the firm.

2. The amount of money realized by the firm from sales of warrants and lands, giving the number of the warrants and the description of the lands, from which said money was derived.

3. The cash paid out for warrants, for balances, for the liquidation of liabilities, and for expenses of every kind.

4. It should have deducted the payments from the receipts, and thus shown the cash on hand.

5. It should have shown by the number of the warrants, and the names of the warrantees, how many and what warrants had been obtained from the department, and how many and what warrants had been purchased.

6. It should have shown by the number of the warrants, and the names of the warrantees, the warrants that had been sold, the times

when sold, and the persons to whom sold, as well as the price each warrant brought.

7. It should have shown by the number of the warrants, and the names of the warrantees, how many and what warrants had been located, when, where, and on what, located, with a full legal description of the land so located.

8. It should have shown by their numbers, and the names of the warrantees, the warrants then on hand, unsold and unlocated.

9. It should have shown by their numbers, and the names of the warrantees, and a description of the land, all the lands that had been sold, and how and for what sold.

10. It should have shown bills receivable on lands sold on credit, and the amount remaining due or unpaid, with the interest each sum was bearing.

11. It should have deducted the lands sold from those not sold, and thus to have shown the lands on hand.

12. It should have shown the liabilities of the firm unpaid.

This, and nothing short of this, would have shown the condition of the business on the 28th of June, 1848. Its assets of all kinds, and its liabilities, would have then been shown. Such an account would have been intelligible, and could have been easily made up by the defendant, and would have needed no explanation from the defendant. It would have spoken for itself.

We will now see how many of these characteristics of an account belong to Books 1 and 2.

1. There is nothing in these books showing when they were made out, or up to what time they contain a record of what they purport to show.

2. Many of the items in said books are in pencil marks instead

of ink, and a large portion of them is in the handwriting of the defendant, without any evidence as to when the writing was made.

4. Said books contain the division of lands and assets between Brooks, Field & Martin, which did not take place till October and November, 1848.

5. Said books do not contain all the warrants of Brooks, Field & Co., by some 150. They contain no list or statement of warrants on hand June 28th, 1848, though in April, 1848, when defendant says these books were made out, there were some 150 warrants unlocated and unsold. Said books contain certain locations and sales of warrants that had been made, but not all of them.

6. Said books contain no account of the money advanced to the firm by the complainant, and no account of the warrants received from the department, or of those purchased.

7. They contain no account of the money paid for warrants, for liabilities, for expenses, or for any other purpose.

8. They contain no account of liabilities unpaid, or of cash, warrants, and bills receivable, on hand.

These books contain the number of claims, the number of certain warrants, the description of certain lands, the setting off of lands to Brooks, Field & Martin, and will aid much in making out an account of certain branches of the business, but there is not one characteristic of an account of the business of Brooks, Field & Co., on the 28th day of June, 1848, in them, and no man, from these books alone, could ever make out such an account.

But even these books, much as they lack of being an account of said business, in either April or June, 1848, were never shown to Martin. Little as they do contain in the way of an account, they contain enough to show that the defendant committed a stupendous fraud on Martin on the 28th of June, 1848, and that had he seen even these books, he would not have made said sale.

But it is not true that Books 1 and 3, if he did get them in the Spring of 1848, from the Fields, were all the accounts the defendant at that time got from said Fields. In answer, the defendant states, that in April, 1848, he obtained from said Field not "Books," but "Statements," of account. He also says that the accounts which he did get, showed a number of warrants that could not be accounted for, and cash that was not ready to be paid over. But Books 1 and 3, which he says were those accounts, do not show these things. The defendant says he offered to show Martin not "Books of Records," but "Statements" of account which he had obtained from the Fields. Defendant says he received from said Fields "*detailed statements*" of said business. The letter of defendant to B. F. Field, Aug. 12, 1848, refers to a list of deferred payments which he received in the then "last Spring," as well as to the Books in his possession, and Books 1 and 3, do not contain said list of deferred payments, though an account of the business would contain such a list. (293, 49, 58, 67, 71 of Record.)

Also plaintiff's exhibits 69, 78 and 85, show that the defendant had and kept in his possession these original accounts, and that by them he afterwards tested the correctness of the accounts sent him by B. F. Field and C. D. Cole. (Record, 323, 326 & 329.)

It is to be borne in mind, at all times, that this pretence that the defendant exhibited to Martin these books on the 28th June, 1848, is entirely an afterthought. Defendant had no such theory in his mind when he drew his answer. That does not pretend that he had any books, but only some imperfect statements.

But again, if these books had been present, they, of themselves, would not enable an accountant to make up an account. They do not purport to be accounts, or to show any results whatever. *There is not a footing in them.* Now, if we were to concede that these books were there and that they contain an account—which we entirely deny—the question remains, did Martin, at that time, so far examine them as to learn the condition of the business, and the value of the interest he was selling?

The answer of the defendant is conclusive against the defendant upon this point. Its whole burthen is to lay blame upon the Fields for not having rendered proper accounts. It no where pretends that even the defendant had such accounts as would have enabled Martin to investigate the business. Defendant says that *he was often vexed that he could not get them.* When the defendant drew his answer, he was manifestly of the opinion that if he and Martin were in equal ignorance as to the value of Martin's interest, that would sustain the sale; and that is all he aims to establish in his answer. (Record, 55 to 85.)

The last quotation is perfectly conclusive upon this subject.

"Complainant seemed to have little taste or inclination for ex-
"amining details." (Record, 71.)

Now, complainant was making a sale of his interest in the business, the value of which depended entirely upon its *details*, yet complainant *seemed to have no disposition to examine them.*

This admission is one of those stray truths which have been thrown into the answer by the defendant thoughtlessly, and shows the utter falsehood of whole pages of the answer. To say that the complainant was there in full health; was there to effect a sale of his interest in so large a business; and yet was so indifferent to it, that he had no inclination to examine into its value, is simply absurd. It may be true that complainant "seemed to have little "taste or inclination for examining details;" but the reason is to be found in the fact that Martin was not at that time in condition of health to examine anything, and did not examine—or in the language of Courtney's deposition, "he seemed confused and be-
"wildered, and trusted the adjustment of matters to his friends,
"more than his own judgment; he was not only incapacitated for,
"but seemed disinclined to enter into, any thorough investigation of
"his business matters in Pittsburgh." (Record, 182.)

10. We shall tax the patience of the court with only one more allegation in the bill, and statements in the answer, as to the meeting in Pittsburgh, in June, 1848, and this relates to the health of Martin and his financial trouble at that time.

22. The bill alleges that after Martin received news of failure of Lake & Co., he was prostrated in health, and so continued during the month of June, 1848, and that during said month of June, when defendant bought the interest of Martin, that Martin was not in a fit condition of mind to do business.—Record 8 & 9.	22. This is distinctly denied at all points; and the answer asserts that the complainant was during the days of negotiating the purchase, in his usual health and perfectly competent to do business.—Record, 55, 80 & 81.

EVIDENCE.

1. Of Martin's health before he went to New Orleans:

See depositions of W. S. Courtnay. (Record, 180 & 184.)

See deposition of Ira B. McVay. (Record, 159 & 160.)

2. Martin's health in New Orleans after hearing of Lake's failure, and during June, 1848.

Deposition of JAMES M FRANCISCUS:

"I was with him for two month after, (meaning after getting to New York, 20th of April, 1848,) and his condition was one of prostration of mind and body; he was kept up entirely by stimulants."

In reply to the question whether he accompanied Martin to his house and to New York city, he says:

"I did, both to his house and to New York city. We left his home in April, 1848, for New York city; remained about two months with him; his condition was one of great nervous excite-

ment, and prostration of mind and body. I have often heard him speak of some infirmity he suffered, but cannot now remember it. He was always nervous and easily excited; cannot say how it affected his business. When in New York with me, he was not in a condition to examine accounts or attend to business properly." (Record, 146 to 151.)

Deposition of HIRAM H. TUCKER.

Third Interrogatory.—"Were you and Warrick Martin, complainant, frequently together in the months of April, May and June, 1848, in the city of New York? If yea, state how frequently you there saw him, whether you had conversation with him and opportunities of knowing the state of his physical and mental health during that time?" *Answer.*—"About that time I was employed in a banking office in Wall street, in the city of New York, the proprietors of which were correspondents of Martin & Co., of the city of New Orleans, and during which time Warrick Martin, the complainant, was in New York City frequently, in our office, (I mean the office of Joseph S. Lake & Co). I also saw him occasionally during said time at his rooms at the hotel where he was stopping. The peculiar nature of his business at that time in New York, made me quite well acquainted with him. Although I never knew him, before this time, except by correspondence, I had frequent conversations with him, and saw enough of him to judge something of his physical and mental health during that time."

Fourth Interrogatory.—"If you state that you had information of his mental and physical health during those months, state fully what his condition was, and whether or not he had any, and what disease, and whether he was capable of examining accounts and transacting business during those months. State fully and particularly all you know of his mental and physical condition, and his ability to transact business, during the months of April, May and June, 1848." *Answer.*—"His physical condition was apparantly that of a man worn down by travel and mental excitement. I don't

know that he had any disease. I had no information of his health, except from his appearance to me at these interviews. He appeared like a man mentally distracted at the losses which would ensue to him from the failure of the house of Joseph S. Lake & Co., and which he said would destroy him at New Orleans. He could not well be brought to a settlement of his accounts, and these accounts being so intricate and extensive, in my judgement he was not capable, at that time, of examing and making a settlement of them." (Record, 138, 139 & 140.)

Deposition of CHARLES S. TUCKER:

"I was with complainant in New York, in the months of April and May, 1848. We occupied the same room at the time spoken of; I saw him every day. I did know his physical and mental health during those months. He was greatly prostrated in health and spirits. He often complained to me at that time of a disease of the heart, which with his mental and nervous prostration, made his condition pitiable at times. He was at those times certainly not in a good mental condition to examine accounts and do business. Mr. Martin was at that time forced to attend to some business, but he was in no condition to look after his own interests. He seemed struck down and powerless, incapable of using much judgment in his business matters." (Record, 133 & 134.)

Deposition of N. B. CURTIS:

"I saw Martin in the city of New York in April, May and June, 1848. I had opportunities of knowing his health, physical and mental. My relations with said Martin were quite intimate. We boarded at the same hotel; met him almost daily; often many times a day when he was in the city. Mr. Martin was physically very weak; health much impaired; and appetite poor. Mr. Martin was very nervous and excitable; his mind was apparently very much impaired." * * * * "I thought at that time, there was a strong probability that Mr. Martin would have to be sent to

a lunatic asylum. I regarded him as mentally incompetent and unfit to transact ordinary business."

On cross-examination he says: "I had a settlement with the firm of W. Martin & Co., in the Spring of 1848, but the negotiation was with Mr. Kahl, Martin's partner. I did not transact, or attempt to transact, any business with Martin to my recollection, as it was apparent he was unfit to do business." (Record, 124 & 125.)

Deposition of IRA B. McVAY:

"I saw Martin in Pittsburgh in the last week of June, 1848. I can't say how often I saw him during that week; but I saw him frequently. My opportunities for knowing the condition of his health were good. I was intimate with him, and saw him frequenly. The condition of his health was feeble; his spirits were very much depressed; and his mind seemed much agitated. On the 28th day of June, 1848, said Martin was arrested in Pittsburgh on a bench warrant, which, together with the fact that a creditor had threatened to shoot him, tended much to increase his mental debility. I saw Martin on the 28th June, 1848; he was not in such a condition of mental health as to be able to examine accounts understandingly, and to transact business."

On cross-examination: "I know he had a nervous affection. All I know about such disease is, that I have frequently seen its effects upon him. The disease produced a nervous twitching of his limbs and a depression of his spirits, and while in that condition he was unfit to transact his business." (Record, 159, 160).

Deposition of W. S. COURTNEY:

"I have known Warrick Martin very intimately since 1845. I have been in his service, visited his family, occupied the same office with him, and have been his legal adviser. These and like opportunities of knowing him, ran through a period of some three or four years.

4th Interrogatory. Where did Martin reside in Summer of 1846, and had he then any, and what, disease? Do you know when and why he removed to New Orleans; if so, state fully? *Answer.* Said Martin, in the Summer of 1846, resided in Pittsburgh, Pennsylvania. I think, in Wiley street. At that time, and subsequently, he was afflicted with a vervous disease, which at times confined him to the house. His heart seemed to be affected through his nerves. I think it was in the Fall of 1846 that he removed to New Orleans. as far as I can now recollect, he had a double object in view: firstly to open business there with some of his friends; and secondly, to try the influence of a change of climate on his health.

"Previously to said Martin going to New Orleans, his disease at times affected him with great nervous debility, faintness and weakness. The paroxysms came on suddenly; his breathing would become short and difficult; he would turn pale; his heart would palpitate; and he would *become dizzy and confused.* At such times he would be compelled to lie down and keep himself perfectly quiet, and move his body as little and think as little as possible. Generally, in the course of twenty-five or thirty minutes, he would recover; at such times he complained of giddiness in his head, numbness and weakness in his limbs, palpitation of the heart, and shortness and difficulty in respiration. I have seen him seized with a fit at the desk, when he was writing letters and looking over papers, obliging him to go into the back office and to stretch himself on three chairs, and keep quiet until the excitement of his nerves was allayed He was, during all the Summer of 1846, quite feeble and prostrated. I could not, and did not, during this period, discover any mental alienation or subversion of his faculties; but his condition was rather that of great bodily and mental feebleness and prostration. He was incapable of his usual application, both mental and physical, to his business; any mental effort put forth in his business was very likely to, and often did, bring on a paroxysm such as I have already described. I considered his mind, as his body, enfeebled; so much so as, not wholly, to be sure, but in a great measure, to incapacitate him for business. He had often

to be assisted along the street; and if I recollect right, had on several occasions to be taken home from his office in a carriage. He was sometimes seized with these fainting fits when walking along.

"I saw said Martin in Pittsburgh, in the month of June, 1848. I am unable now to state on what day he arrived, nor when he left, but think he arrived on a Friday and left on the following Monday or Tuesday; of this, however, I will not be certain. The condition of his health then was much as I have described already.

"Said Martin's mental and physical health in June, 1848, did not seem to be any better than it was during the Summer of 1846–7. He had then recently been unfortunate in business, and was encompassed with manifold financial difficulties, which evidently intensified his complaint. In June, 1848, he arrived in Pittsburgh from New York, where he had been attending to his financial matters with Joseph S. Lake & Co., whose failure had involved him in pecuniary disasters. He was much prostrated both in body and mind. My best judgment is, that at that time, he was incapable of examining long and complicated accounts understandingly. There was a press of business matters on his hands connected with and growing out of the failure of the firm of 'Martin & Co.,' at New Orleans; the firm of 'Joseph Lake & Co.,' of New York; and the house of 'Warrick Martin & Co.,' of Pittsburgh. The creditors at Pittsburgh were clamorous and vindictive. He knew but little of the local business of the house of Warrick Martin & Co., at Pittsburgh. He seemed confused and bewildered, and entrusted the adjustment of matters to his friends, more than to his own judgment. He was not only incapacitated for, but seemed disinclined to enter into, any thorough investigation of his business matters at Pittsburgh; and when he left, placed them almost wholly with his friends, agents and assignees. I was one of the assignees of Warrick Martin & Co.

"I think it was on the morning of the 28th June, 1848 (I will not be positive as to the day), that Martin was arrested on a bench

warrant issued by Judge Hepburn, for alleged fraud, at the suit of a creditor of Warrick Martin & Co. This, together with the threats of personal violence, made by some of the aforesaid creditors, so aggravated his complaint, that after we had hunted up and given bail for his appearance before the Judge next morning, he had to return to his room at the hotel and go to bed.

"On the evening of the day said Martin was arrested, I visited him at his room in the hotel, for the purpose of counseling and advising with him in regard to his business and the suit, &c. He was unable to sit up, and had to lie in bed. I conversed and counselled with him, somewhat in regard to his business, but not with much satisfaction; as before stated, he trusted his matters more to his friends than to his own judgment. I judged him then incapable, from the state of excitement and prostration he was under, of exercising his usual thought on his business matters. The effort to remember the details of business confused him, and added to his excitement and debility.

I saw said Martin the next morning. His health of body and mind was much as it had been on the previous day and evening. He came to my office (a little over a square from the hotel), and I went with him up to the court house. He took my arm, and I helped him along. Going up the steps of the court house (some twenty-five or thirty steps in two flights), he had to stop repeatedly and rest. During his examination before the Judge he was unable to stand (as is the usual custom in Pennslyvania), and asked the Judge the privilege of being examined while seated. During his examination he had repeatedly to rest his head on his staff, and would have to stop frequently to recover his memory. His voice was weak and low. He was acquitted of the charge." (Record, 180 to 184.

These depositions show that if a perfect account had been shown to Martin, he could not have examined it, as the answer concedes he did not, much less could he have made out and footed up an ac-

count from said Brooks, which did not contain one footing, if said books had been shown him. Nor was there time in the few hours Brooks and Martin were together in Pittsburgh, to have examined an account in its details, if there had been a perfect account, and Martin had been in good health.

The defendant, in his answer, draws a terrible picture of his condition on the 28th June. His critical and exposed condition, the pressing liabilities of the firm, he was the only responsible man left, everybody else was broke, and defendant was in fear of being utterly annihilated.

> "Defendant considered the condition and situation of the business and affairs of Brooks, Field & Co.—the peculiar and critical situation of their assets—the amount and pressing character of their liabilities, and the peculiarly exposed situation of defendant, all as hereinbefore stated, and defendant objected to paying the notes held by complainant while the other liabilities of Brooks, Field & Co., &c.—~~Page 57 of~~ Record. 61.

Let us stop and sympathise with the sorrows of this unfortunate man, and dwell a moment upon his "exposed condition."

1. He never put a dollar in the business. He was therefore in no great danger of loss.

2. The firm did not owe him a dollar on any account, or for anything.

3. He had in his possession and under his control the entire assets of the firm, worth, on that day, as shown, abuot $150,000. The

whole liabilities of the firm were about $45,000. Of this sum, however, all but $30,000 was in the hands of Martin, and of course the indebtedness to Martin, a partner, could not be pressed till all other debts of the firm were paid.

4. He had in cash more than $24,000, as already shown.

5. He had all the bills receivable belonging to said firm, and many warrants, and was thoroughly acquainted with the condition of said business, and the large receipts from sales monthly realized in Wisconsin. He had bills receivable, over $28,000, and warrants over $17,000, and lands over 46,500 acres.

And 6th. He knew that he had successfully labored to deceive everybody else about it, and that no one could, for years, at least, uncover his falsehoods and deceptions.

He was, therefore, not "naked to his enemies," but was doubly secure against them. He had made them believe that the firm was insolvent, and they would therefore not be likely to proceed to extremities with their claims; and, 2d, if they did, he had the means to pay them all off in a very short time.

Let us now look for a moment at the condition of Martin at that sale, and see whether there was anything in that to justify the conduct of defendant toward him.

1. Martin had advanced to said business over $55,000, and had fraudulently been kept out of nearly all of it—over $52,000—for more than a year.

2. The firm was then owing said Martin, over and above the $30,000 notes on which Martin was still liable, although they had been negotiated, over $20,000—$15,000 of which was in notes and the balance due Martin on account.

3. Martin had not one acre of land, not one land warrant, one

note or bill receivable, or one dollar of cash belonging to said firm, nor did he know where the assets of said firm were.

4. He was entirely ignorant of the condition of said business, broken down in health as well as fortune.

5. Martin was not at all in default. He had his share of all the indebtedness of the firm with him, and if Brooks & Field, who had all the cash and assets of the firm from its formation, had been there with their respective proportions of said indebtedness, all would have been paid.

The insincerity of the answer is astonishing. Martin is represented as the man in default, and Brooks is likely to be ruined by that default, when the truth is exactly the reverse; and if all the assets of the firm had been swept away by other creditors of said firm on the debts Brooks & Field ought to have paid, no man but Martin would have suffered loss, for none but him had advanced anything to the business, and both Brooks and Field had received much more than a compensation for their time devoted to it, while Martin had received nothing, not even interest from his money.

We close this part of the case with the remark that Brooks admits (55 of Record) that Martin reposed perfect confidence in all that Brooks said while this negotiation was progressing.

This purchase cannot be sustained, as the case shows:

1. That it was a purchase, by an agent and partner, of the interest of his principal and co-partner, and must, therefore, be governed by the principles of law applicable to the purchase by a trustee from his *cestui que trust.*

2. It was made for a grossly inadequate consideration, according to the defendant's sworn answer; and without any consideration whatever, according to the evidence; and forced upon the *cestui*

que trust, while in feeble health, and in circumstances of great mental affliction and pecuniary embarrassment.

3. Brooks, the purchaser, was fully acquainted with the nature, amount and value of the assets of the firm, and of Martin's interest, and Martin was wholly ignorant of the same.

4. Brooks misrepresented to Martin the condition of the business and the value of the assets; represented to Martin that his share was nearly or quite worthless; whereas, the testimony shows that Martin's interest was then worth over $36,000.

This purchase was therefore obtained by actual and constructive fraud; and the decree of the court below, setting it aside and ordering an accounting, should be affirmed.

We have already pointed out, in the answer, numerous instances of evasion and insincerity, as well as untruth; but as the defendant relies upon the answer to sustain this purchase, we ask attention to a few more of its statements, which no charity can excuse, and which are disproved by documents in evidence in his own handwriting. We cite only a few out of the many with which the answer abounds:

I.

Answer.—"Defendant further says, that [at this time, (meaning 14th July, 1847, when defendant left New Orleans,) it was not contemplated by him, nor as he supposed, by complainant or said Field, to purchase any land warrants or treasury scrip under said articles of co-partnership, of said complainant, said Field and defendant." (Record, 40.)

EVIDENCE.

The following extract from defendant's letter to S. N. Clary, Aug. 13, 1847, shows that they had not only contemplated it but actually done it:

"S. N. CLARY—*Dr. Sr:*—I have just received your favor of the 3d inst., and lose no time in replying. I wrote you before leaving Washington City. In relation to the warrants you may receive, I wish to urge the importance of forwarding all to me, &c. * * * This request and suggestion applies as well to those you may purchase of Mr. McCright, or others, and those we had purchased from him before I left, as to those that may be returned to us from Washington City. I wrote Mr. McCright to this effect from Washington City." (Record, 445.)

II.

Answer—"And defendant further states that, in the business of said Brooks, Field & Co., there was no provision made in their articles of co-partnership, or in any agreement or understanding of the parties, for any particular mode or manner of disposing of warrants, either by direct sale or otherwise. (Record, 43.)

EVIDENCE.

Extract from articles of co-partnership:

"Memorandum of an agreement made and concluded this 10th day of June, 1847, by and between De Lorma Brooks, S. C. Field and Warrick Martin, all now of the city of Few Orleans, Louisiana, relating to the purchase and sale of bounty land warrants and treasury scrip, that may have been, &c. * * *

"The purchases and sales to be conducted by said Brooks & Field, under the name and style of Brooks & Field, &c. * * * Adding thereto interest at the rate of 12 per cent. per annum, with the understanding that if the sales of scrip or warrants will not have supplied the necessary means for payment of said note or notes at maturity," &c. (Record, 33.)

III.

Answer.—"In further answer to said bill, defendant denies that he made any pretence or representation to complainant that de-

fendant could get no money from the sale of warrants, or that it was necessary for defendant to draw upon his account anywhere. It was unnecessary to make any pretence or representation."

EVIDENCE.

Defendant's letter to Martin February 11th, 1848:

"If I should receive no further remittance from Wisconsin before I leave this, I shall be under the necessity of drawing on Messrs. L. & C. for some funds." (Record, 280.)

Defendant's letter to same, February 17th, 1848:

"I have not yet retained anything to meet expected demands and may be obliged to draw through Messrs. Lake & Co. Nothing more from S. C. Field. Should be glad to hear from you; my regards to family and friends." (Record, 281.)

Defendant's letter to Martin, April 3d, 1848:

"Not having received anything from Field since I wrote you, I had sold two quarter sections of my land in Illinois to a gentleman of New York, and forwarded the papers to Lake, with orders to have the money paid there, and draw on it for spending money." (Record, 286.)

Explaining the motives for the sale by Martin, to defendant, for so small a sum, in June, 1848, the answer says: (Records, 57.)

IV.

Answer.—"The notorious fact of the case, that California was not only diverting the current of emigration from its usual channels that ran to the new States and Territories this side of the Rocky Mountains, but was attracting citizens and money from these latter places, rendered it also fully apparant to both complainant and defendant, that the sale of lands must be dull and slow, and that they could not likely be sold in large quantities or for full ready pay."

Here the defendant has attempted to write and swear down the history of the country. The gold mines were not discovered until the Fall of 1848.

R. M. Patterson, Director of the Mint, Philladelphia, in his official report to the Secretary of the Treasury, dated December 11th, 1848, says:

"Sir:—On the 8th instant we received, as I have already had the honor to inform you, the first deposit of gold from California. It was deposited by Mr. David Carter, from San Francisco, by the Isthmus route," &c.

74, Niles' Register, 389.

20, Hunt's Merchant's Magazine, 55.

The officers of the army made report to the President of the existence of gold mines in California, in July and August, 1848; the report not reaching the Eastern States till the Fall of 1848.

President's Message, December 5th, 1848.

The emigration did not commence from the Northwestern States till the Spring of 1849. This is testified to by John M. Keep, Hazen Cheney, E. R. Wadsworth, Jesse Moore, H. H. Gray, S. C. Field and B. F. Field, depositions on file in this cause. If the defendant, now answering from recollection, had placed the date of the emigration one or two years too early or too late, it might be regarded as a mere mistake in dates. But he pretends in his answer to swear that this emigration was talked over, and formed a principal inducement to the sale of Martin's interest, one year before it occurred. This is not an achronism but falsehood. An honest man may forget what did take place; but cannot remember what did not take place.

V.

Answer.—"Defendant states that three months after Brooks, Field & Co. commenced to purchase claims as aforesaid in New Or-

leans, (meaning September 10th, 1847, the articles bearing date of June 10th, 1847), not twenty warrants had been issued from the Pension Bureau, on claims purchased by said Brooks, Field & Co." (Record, 68.)

EVIDENCE.

Defendant's letter to S. C. Field, September 4th, 1847:

"The cloud has apparently blown over, and I have recived this week forty-two warrants instead of one hundred that was promised." (Record, 442.)

Defendant's letter to George B. Field, September 4th, 1847:

"I am very well pleased with your account of the manner your brother in Wisconsin, is disposing of our warrants. I received but fifty this week and the direction you suggested, 'to Geo. B. Field, present' came near upsetting all our calculations." (Record, 270.)

VI.

The bill charges that defendant gave orders to have some lands entered, withheld from the market, or that if said lands were sold they should be sold on credit.

Answer—Defendant denies that he gave orders to keep lands when entered from the market, or not to offer them for sale, or that when said lands were sold they should be sold on credit. (73 of Record.)

EVIDENCE.

Defendant's letter to Geo. B. Field, Sept. 20, 1847:

"When lands are once located we will not allow them to come into competition with our warrants till the latter are all disposed of." (Record, 271.)

Defendant's letter to S. C. Field, Sept. 22, 1847:

"We should now have enough, in Wisconsin, to supply the de-

mand there, and we should have two or three industrious, prudent, judicious, and trusty men constantly employed in examining and selecting the best lands subject to private entry, so that whenever we have a warrant, one or two more there, that no person wants, let it without any delay be located on the best land in market, and when located, let it not come in competition with our other warrants till all are disposed of." (Record, 418, 419 & 420.)

Defendant's letter to S. C. Field, Oct. 1, 1847:

"I thought I said to you, as I did to George B., that when a location was made of our warrants, I did not wish the land so located to be brought into competition with our warrants till the latter were disposed of." (Record, 424 & 425.)

Defendant's letter to Geo. B. Field, Feb. 26, 1848:

"In my reply to that letter, I think I omitted to say that I would not sell on a credit of over thirty days at anything less than $200. If your locations have been such as I have persuaded myself they are, they ought to bring at least that much to the qr after locating. Further, I trust you will not have neglected to selected a portion of the choice locations as not in market. For though we have every prospect of a peace soon, yet the sales of the lands we have located, cannot be forced by a reduction in the price." (Record, 283 & 284.)

Defendant's letter to S. C. Field, Feb. 12, 1848:

"I am glad you find no difficulty in entering such lands as may be valuable. Beware of long credits." (Record, 433 & 434.)

Defendant's letter to Geo. B. Field, Feb. 13, 1848:

"I forgot yesterday to say that LONG credits are rather to be avoided than courted." (Record, 282.)

VII.

Answer—"Defendant denies that he ordered said S. C. Field

George B. Field, or B. F. Field to buy warrants, and denies that he directed or ordered said S. C. Field, previous to the 28th of June, 1848, or after, to buy warrants again with what he might realize from the sale of warrants, or to hold on to or keep the money realized in said business to operate with." (Record, 74.)

EVIDENCE.

Defendant's letter to S. C. Field, Aug. 31, 1847, says:

"I approve of your determination to buy warrants if you can get them at $120 and under, which your brother gives me to expect you to be able to do." (Record, 444.)

Defendant's letter to S. C. Field, Sept. 22, 1847, says:

"If you can sell any at Cincinnati or Louisville for $140 or $150 or any higher sum, let slip, and run the risk of buying again at $100, $110 whenever we may want." (Record, 418, 419 & 420.)

Defendant to S. C. Field, Oct. 1, 1847, says:

"My views are to supply the market as fast as practicable with warrants, even at a less price than they now command; and if the state of our engagements and finances will admit, we may purchase any quantity more." (Record, 424, 425 & 426.)

Defendant to S. C. Field, Nov. 21, 1847, says:

"Gather all the funds possible after lessening our indebtedness considerably; we should have funds left to operate with before we get through the warrants we have now. God be with you." (Record, 568 & 569.)

VIII.

Answer—"Defendant denies that he had, in September, 1847, in his possession 450 land warrants, or in the months of October and December, 1847, 600 warrants, or at any one time more than 10 regularly, or legally, assigned warrants." (Record, 78.)

1663

EVIDENCE.

Defendant to Geo. B. Field, Dec. 25, 1847, says:

"I sent you three warrants, regularly assigned, from Chicago. I now send you twelve, same sort, and hope to meet early at Washington a liberal remittance." (277 & 278 of Record.)

Defendant to Geo. B. Field, Dec. 31, 1847, says:

"I have this day purchased 9 warrants, which I obtained for $125 each, and which are enclosed and forwarded to you herewith, together with 9 others of the B. & F. cases. Four of these latter are unassigned." (Record, 278.)

This letter contained 14 assigned warrants. In October, 1847 he had received 567 warrants. (Record, 428.)

IX.

Answer.—"Denies that he received any money out of siad business, or any number of land warrants as great as five in ten days after the 28th of June, 1848."

EVIDENCE.

Letter of defendant to S. C. Field, July 1, 1848: (Record, 435.)

"I came here day before yesterday on purpose to see Mr. Trebue, whom I had at last succeeded in meeting. I have received the 13 warrants from him, and by this mail forward them to B. F., &c.

"WASHINGTON CITY, July 1, 1848.

B. F. FIELD, ESQ.:

Dear Sir—I wrote you on the 5th June with three warrants, and on the 21st with three more, to neither of which I have any reply. I now enclose you 13, and by same mail I direct S. C. to forward you the powers of attorney." (Record, 291.)

We have here selected none of the many statements of the an-

swer, directly disproved by more than two witnesses, but have selected a few only of the instances in said answer where its positive statements are disproved by documents in the handwriting of the defendant himself, in evidence in this cause.

One instance of willful falsehood in an answer will impeach its character. These examples will, at least, prove that the answer is wholly unreliable in all its important statements, whether intentionally false or not.

Martin, in his bill, made of Brooks certain demands for accounts to accompany his answer, (Record, 28, 29 & 30,) and Brooks, in his answer, (Record, 88, 89, 90, 91, 92, 93, 94,) professes to comply with those demands, not by rendering accounts, but by making statements, all of which are untrue but one.

I.

"In answer to complainant's 14th interrogatory, defendant states that, before the 28th day of June, 1848, defendant received out of, and resulting from the said business of Brooks, Field & Co,, in all, to the best of defendant's knowledge, recollection and belief, $20,831.39. (Record, 91.)

EVIDENCE.

Cash received by D. L. Brooks before June 28, 1848:

Date.	Proof.	Amount.	Record
Dec. 15, 1847,	P E, B A, No. 73,.....	$5,335.91	325
" 25, "	P E, B A, No. 17,.....	1,000.00	288
Feb. 12, 1848,	P E, B A, No. 24,.....	1,000.00	281
" 17, "	P E, B A, No. 23,.....	1,000.00	282
May 1, "	P E, B A, No. 72,.....	4,000.00	325
" 31, "	P E, B A, No. 71,.....	1,100.00	324
June 21, "	P E, B A, No. 42,.....	6,809.98	290
Dec. 15, 1847,	Answer, 106, 3d acct. item 13	550.00	91

Date.		Proof.	Amount.	Record.
July,	"	P E, B B, No. 263,.....	150.00	484 & 445
Aug.	"	P E, B B, No. 263,.....	300.00	"
Sept.	"	P E, B B, No. 563,.....	500.00	"
"	"	P E, B B, No. 263,.....	400.00	"
"	"	P E, B B, No. 263,.....	500.00	"
"	"	P E, B B, No. 263,.....	150.00	"
Oct.	"	P E, B B, No. 263,.....	500.00	"
"	"	P E, B B, No. 263,.....	55.00	"
Nov.	"	P E, B B, No. 263,.....	755.00	"
Dec.	"	P E, B B, No. 263,.....	35.00	"
Jan.	1848,	P E, B B, No. 263,.....	1,666.66	"
"	"	P E, B B, No. 263,.....	100.00	"
Feb.	"	P E, B B, No. 263,.....	75.00	"
"	"	P E, B B, No. 263,.....	60.00	"
June 1,	"	Rp't of Mast. and dep. of C. S. Tucker.....	1,200.00	133 & 134
Oct. 28,	1847,	Exhibit No. 1, attached to ans.	55.00	90 & 97
" 30,	"	do do	483.00	"
Dec. 13,	"	do do	251.00	"
" 14,	"	do do	63.00	"
" 17,	"	do do	2.50	"
Jan. 24,	1848,	do do	435.25	"
Mar. 28,	"	Exhibit No 2, do	300.00	"
" 2,	"	Letter to Jos. S. Lake & Co., & Ex. before Mast. No. 502,..	400.00	564
		Total before June 28, 1848.....	$29,233.30	

Amount admitted by Brooks.....	$20,831.39
Amount shown by the Exhibits.....	29,233.30
Difference.....	8,401.91

This was not the amount that had been received from sales, including that in the hands of agents, but the actual amount in the hands of Brooks.

II.

Answer.—"Less than $8,000 more was received up to the 22d day of November, 1849." (Record, 92.)

The proofs show $17,382.38 received.)

Cash received by De Lorma Brooks, from November 22d, 1848, to November 22d, 1849, as per receipts given to B. F. Field:

Date	Proof.	Amount.	Record.
Nov. 23, 1848,	P E, B A, No. 93.....	$1,690.37	331
Feby. 5, 1849,	Exhibit before Master, No. 329,	500.00	1021
M'ch. 30, "	P E, B A, No. 79.....	300.00	327
May 6, "	P E, B A, No. 74.....	542.22	325
May 20, "	P E, B A, No. 75.....	590.00	325
June 17, "	P E, B A, No. 76.....	800.00	326
July 31, "	P E, B A, No. 77,.....	1,500.00	326
Aug. 22, "	P E, B A, No. 78,.....	1,800.00	326
June 3, "	P E, B A, No. 97,.....	1,325.19	332
M'ch 17, "	P E, B A, No. 69,.....	347.15	323
Sept. 23, "	P E, B A, No. 98,.....	835.54	832
Oct. 10, 11, "	P E, B A, No. 89,.....	2,536.86	330
Nov. 1, "	P E, B A, No. 86,.....	2,200.00	329
Nov. 9, "	Exhibit before Master, No. 342,.	800.00	1042
	Total from B. F. Field to Nov. 22, 1849,..	$15,767.33	

Received by De Lorma Brooks in person:

M'ch, 1849,	ac'ts	3 & 4,	on	Warrant	No.	903,	58.00	735
" "	"	3 & 4,	"	"		2065,	325.00	735
" "	"	3	"	"		1949,	180.00	735
" "	"	3	"	"		2001,	85.00	735
" "	"	3 & 4,	"	"		915,	272.00	735
" "	"	3	"	"		1843,	190.00	735
Sept. "	"	3	"	"		1316,	280.00	735
Nov. "	"	3	"	"		1833,	225.00	735
						Total received to November 22, 1849,..	$17,382.33	

Also, accounts 3 on file but not printed for the other items.

Amount actuauly received,.....$17,382.33
Answer states less than..... 8,000

Difference,.....$ 9,382.33

III.

Answer. "Less than 7,500 dollars more was received up to the 22nd November, 1850."

Cash received by D. L. Brooks, from Nov. 22, 1849, to Nov. 22, 1850, from B. F. Field:

Date.		Proof.	Amount.	Record.
Jan.	2, 1850,	P E, B A, No. 85.....	$1,300.00	329
Mar.	18, "	P E, B A, " 84.....	340.00	328–9
May	11, "	P E, B A, " 83.....	300.00	328
June	3, "	P E, B A, " 82.....	100.00	328
"	18, "	P E, B A, " 91.....	502.00	330
"	29, "	P E, B A, " 81.....	400.00	327
July	12, "	P E, B A, " 87.....	500.00	330
"	19, "	Exhibit before Master, No. 342 ...	210.00	1,043
Aug.	1, "	do do do " 342 ...	210.00	1,043
"	9, "	do do do " 342 ...	203.42	1,043
Oct.	15, "	do do do " 342 ...	100.00	1,043

Total from B. F. Field from Nov. 22, 1849, to Nov. 22, 1850 .....$4,165.42

Received by Brooks in person:

Feb.	1850	Acc'ts 3 & 4, on warrant No. 2,053...	380.00	735
Mar.	"	do 3 & 4, do " 1,796...	200.00	735
Oct.	"	do 4, do " 9,965...	180.00	735
"	"	do 3 do " 5,858...	125.00	735
Nov.	"	do 3 & 4, do " 10,556...	350.00	735
Oct.	"	do 4, do " 9,711...	300.00	735
"	31, "	Iowa location acc't. 3.....	150.00	on file
"	1, "	S. C. Field's deposition.....1,287.00		714
"	1, "	Greenly note book 7.....1,237.00		715

Date.	Proof.	Amount.	Record
Oct. 31,'50	Collections and int., P E, 266, book B.	1,400.00	487
" 31, "	do do do do	1,550,00	487
" 31, "	do do do do	800.00	487 & 714–6

Total so far as found.....$12,124.42

All these payments admitted and proved.

Difference in amounts, $4,624.42.

IV.

Answer.—" Less than $1,500 more was received up to the 22nd of November, 1851." (Record, 92).

Cash received by D. L. Brooks from Nov. 22, 1850, to Nov. 22, 1851, from C. D. Cole:

Date.	Proof.	Am't money collec'd by him.	Record.
Nov. 11, 1850,	cash loaned C. D. Cole, book No. 7, page 2, and Pl. Ex. before Mast. Nos. 57 & 68..	$1,038.38	878 & 882
April 30, 1851,	Ex's before Mast. No. 169 & 167..	468.95	922
Mar. 17, "	do do " 166.....	300.00	919
June 2, "	do do " 187.....	670.00	940
Aug. 16, "	do do " 187.....	1,294.00	940
Oct. 14, "	do do " 187.....	151.20	940
Nov. 11, 1850,	do do " 187.....	141.27	940
		$4,063 80	

Received by Brooks in person:

Jan. 1851,	Acc'ts	3 & 4,	on	Warrant	No. 1,197....	380.00	735
May, "	do	3	do	"	6,342....	272.00	Acc't 3 on file.
Aug. "	do	3 & 4,	do	"	1,948....	176.79	735–6
" "	do	3	do	"	3,190....	202.20	735–6
" "	do	3 & 4,	do	"	2,779....	173.88	735–6
" "	do	3 & 4,	do	"	2,922....	277.62	735–6
" "	do	3 & 4,	do	"	2,029....	192,09	735–6
" "	do	3	do	"	2,035....	127.85	735–6
Sept. "	do	3	do	"	1,843....	160.00	735–6
" "	do	3	do	"	2,350....	225.00	735–5

Total.....$6,251.23

A considerable sum was received in August, 1851, from S. C. and B. F. Field, not included in the above. Also, account 3 on file. Difference in amounts, $4,751.

V.

Answer.—"Less than $3,000 more was received up to the 22nd of November, 1852." (Record, 92).

Cash received by De Lorma Brooks from Nov. 22, 1851, to Nov. 22, 1852, from C. D. Cole:

Date.	Proof.	Amount	Record.
July 23, 1852,	Exhibit before the Mast. No. 181....	$975.00	934
Sept. 2, "	do do do " 187....	800.00	941
		$1,775.00	

Received by Brooks in person:

Mar. 1852,	Acc'ts	3 & 4,	on	Warrant	No. 1,044.....	88.00	735
" "	do	3		do	" 1,365.....	333.87	735
April "	do	3		do	" 1,798.....	195.00	735
" "	do	3		do	" 4,056.....	250.00	735
July "	do	3		do	" 4,388.....	405.00	735
" "	do	3 & 4,		do	" 1,957.....	272.00	735
Nov. "	do	3 & 4,		do	" 1,784.....	625.00	735
Sept. "	do	4		do	" 1,016.....	85.60	736*
						$4,029.87	
June 8, 1852,	S. C. Field admitted.....					1,300.00	
" 8, "	do do					375.00†	
Total.....						$5,704.87	

Difference in amounts, $2,704.87.

*Also, account 3 on file for same items. †Record, 714, 715, 716 — 717.

VI.

Answer.—"Less than $5,000 more by the 22d of November, 1853." (Record, 92.)

Cash received by De Lorma Brooks from November 22d, 1852 to November 22d, 1853, from C. D. & G. C. Cole:

Date.		Proof.				Amount.	Record.
Dec. 1, 1852,	Exhibit	before	Master,	No.	183,..	$ 780.00	935&6
May 13, 1853,	do	do	do	"	189,..	100.00	945
" 25, "	do	do	do	"	192,..	220.00	946
June 11, "	do	do	do	"	195,..	200.00	947
" 20, "	do	do	do	"	196,..	183.00	948
" 23, "	do	do	do	"	198,..	300.00	948
July 5, "	do	do	do	"	197,..	300.00	948
" 11, "	do	do	do	"	199,..	435.00	948
" 20, "	do	do	do	"	202,..	100.00	950
May 20, "	do	do	do	"	200,..	100.00	949
Aug. 5, "	do	do	do	"	203,..	166.24	949
Sept. 15, "	do	do	do	"	205,..	260.00	951
Oct. 8, "	do	do	do	"	206,..	320.00	952
Nov. 22, "	do	do	do	"	210,..	900.00	954
						$4,362.24	
Received by Brooks in person:							
Feb. 1853,	Acc't	3 & 4	on	Warrant	No.	2452,..	516.50	736
" "	do	3	do	"		4984,..	455.00	736
" "	do	3 & 4	do	"		3285,..	400.00	736
" "	do	do	do	"		8946,..	400.00	736
" "	do	do	do	"		1912,..	400.00	736
" "	do	do	do	"		2658,..	400.00	736
" "	do	do	do	"		5336,..	400.00	736
" "	do	do	do	"		22705,..	400.00	736
" "	do	do	do	"		1954,..	400.00	736
" "	do	do	do	"		3190,..	400.00	736
Nov. "	do	do	do	"		1313,..	691.00	736

Total November 22d, 1853,.....$9,224 74

Difference in amounts, $4,224.74.

VII.

Answer.—"Less than $6,500 more up to the 22d of November, 1854." (Record, 92.)

Cash received by D. L. Brooks from November 22d, 1853, to November 22d, 1854, from Geo. C. Cole:

Date.	Proof.	Amount.	Record.
June 21, 1854,	Exhibit before Master, No. 223,....	$ 100.00	961
Aug. 1, "	do do " 228,....	727.58	963
Sept. 2, "	do do " 232,....	1,150.00	965
Oct. 2, "	do do " 231&232,	822.50	965
Nov. 1, "	do do " 233,....	2,000.00	965
Nov. 1, "	do do " 233,....	1,809.24	965
		$6,609.32	

Received by Brooks in person:

Jan. 1854,	Acc'ts 3 and 4,	on Warrant	No. 1952,..	70.00	736
May "	do 3	do	" 2651,..	355.00	Acc't 3 on File.
June "	do 3 and 4,	do	" 2764,..	560.00	736
July "	do do	do	" 2169,..	580.00	736
Sept. "	do do	do	" 2837,..	500.00	736
Oct. "	do 3	do	" 2398,..	323.00	736*
				$8,997.32	

*Also, for some parts of items see account 3 on file.

February 12th, 1853, eight quar. secs. sold for Farm 4,000.00

See answer p. 107.
See book 7.
See P E before Mast., q 1, q 2, q 3, 835 to [837

Total to November 22, 1854,.....$12,987.32
Difference in amounts, $6,487.32.

VIII.

Answer.—"About $11,000 to $11,500 more up to Nov'r, 1855." (Record, 92.)

Cash received by D. L. Brooks, Nov. 20, 1854, to Nov. 22, 1855, from G. C. Cole:

Date.	Proof.			Amount.	Record
Nov. 30, 1854,	Exhibit before the Master, No.		236	$ 882 90	968
Jan. 10, 1855,	do	do	239 & 240	400 00	969
" 1, "	do	do	240	202 50	969
April 3, "	do	do	245	605 95	972
" 30, "	do	do	246 & 247	1,468 39	972
June 2, "	do	do	248 & 249	2,069 83	773
July 2, "	do	do	250	500 00	974
" 31, "	do	do	251 & 252	1,010 20	975
Sept. 1, "	do	do	254	1,026 45	976
Oct. 1, "	do	do	255 & 256	1,807 33	977
" 31, "	do	do	258 & 259	50 50	979
" 31, "	do	do	250 & 259	652 55	979
" 31, "	do	do	258 & 259	671 32	979
				$11,137 89	

Received by Brooks in person:

Dec. 1854,	Act. 3,	on Warrant No.	4,332,	480 00	376
Feb. 1855,	Act. 3,	do	15,275,	360 00	736
" "	Acts 3 and 4,	do	1,326,	432 40	736
March "	Acts 3 and 4,	do	20 284,	975 00	736*
				$13,380 29	

*See, also, for part of items Acct. 3, on file.

Received for right of way through A. L. Field farm, in 1855. (See deposition of defendant, before Master, and Acct. 3d	1,000 00	702
Total to Nov. 22, 1855	$14.380 29	
Difference in amount	2,880 29	

IX.

Answer.—"A little over $7,000 more up to November, 1856." (Record, 92.)

Cash received by D. L. Brooks, from Nov. 22, 1855, to Nov. 22, 1856, from G. C. Cole:

Date.	Proof.			Amount.	Record
Dec. 4, 1855,	Exhibit before the Master, No.		261 & 262	$ 1,971 47	981
Jan. 2, 1856,	do	do	264	404 00	982
Mar. 1, "	do	do	265	244 67	982
Apr. 1, "	do	do	266 & 269	605 49	985
" 30, "	do	do	267 & 269	1,150 00	985
June 5, "	do	do	105 & 270	1,000 00	896 & 986
Jul. 31, "	do	do	273	1,131 37	988
Sept. 2, "	do	do	273	38 57	986
" 30, "	do	do	274	729 96	989
Nov. 1, "	do	do	274	1,547 69	990
				$8,873 22	

Received by Brooks in person:

March, 1856,	Acct. 3,	on Warrant No. 1,947,				172 00	736
July,	" "	3 and 4,	"	1,336,		884 00	"
Oct.	" "	3 and 4,	"	2,858,		700 00	"
"	" "	3	"	2,523,		944 00	"
"	" "	3 and 4,	"	3,204,		944 00	"
						$12,517 22	
Apr. 30, 1856. Received of H. H. Gray, (see depositions of Gray and L. G. Fisher)						3,100 00	690 & 692
Total						$15,617 22	
Difference in amounts						$8,617 22	

All these exhibits, from which we now make up these accounts, were in the hands of Brooks at the the time he wrote his answer, and he had four months time in which to answer the bill.

But there are many thousands of dollars received by the defendant from said business, which, owing to the nature of the proof, we could not put into these accounts and prove the items. The items given are all proved plainly and distinctly. The sums in these accounts are net amounts received by the defendant, after deducting all taxes, salaries and expenses. No interest is added or charged, excepting in the amount received from H. H. Gray. No charge is here made for the immense sums received by the defendant for interest, and no interests charged on the sums since received. Including interest, the cash received by the defendant from this business, will amount to near $250,000.00.

Difference between the aggregates, $51,474.10.

THE SETTLEMENT AND DIVISION IN NOVEMBER, 1848.

25. Your orator further says, that he is informed and believes, and therefore says, that in the Fall of A. D. 1848, the said defendant, concealing from said S. C. Field the fact that said defendant had purchased from your orator his interest in said business as hereinbefore stated, took with him, said defendant, to Wisconsin, a lawyer by the name of Jesse Gilman, who professed to represent your orator, although he, said Gilman, was unknown to your orator, and had no authority from your orator to represent him in any way or for any purpose; and the said Gilman, for your orator, and the said defendant in person, demanded and required from said S. C. Field a division of the lands, to wit: the said 70,000 acres; and said lands were then and there divided between the said S. C. Field, the said defendant, and the said Gilman, professing to act for your orator; and the interest of your orator was set off to him, in name and form. (Record, 12)

25. Defendant further answering, states that it is true that in the Fall of 1848 he took with him to Wisconsin a lawyer by the name of "John M. Gilman," not "Jesse Gilman," for the purpose of facilitating a settlement with said S. C. Field, and a division of the property of Brooks, Field & Co., and that said Gilman and defendant demanded and required from said S. C. Field a division of the lands of Brooks, Field & Co., without advising said Field that defendant had purchased the interest of complainant. (Answer; Record, 69).

"In answer to complainant's 12th interrogatory, defendant states that no part of said lands, so entered, were ever set apart to complainant in name or form." (Answer; Record, 88).

EVIDENCE.

We now inquire, were the lands of Martin thus set of by Gilman, set apart to him in name and form, or were they set off to Martin at all? We quote what the defendant swears on this subject, on page 101, of his answer:

"In answer to complainant's twelfth interrogatory, defendant

states that no part of said lands, so entered, were ever set apart to complainant in name or form." (Record, 88).

Here is a positive statement of the defendant, under oath, in answer to an interrogatory in writing, that *no part* of the lands of Brooks, Field & Co. *were ever set off to the complainant in name or form.* Notice the nature of this interrogatory, and of the answer. The question put to the defendant, and which he answers, was a question of fact, and not of law. We did not ask the defendant whether he and Gilman knew of said purchase, and that the lands set off to Martin, were his lands by virtue of that purchase, and he does not answer any such question. We ask him as to the fact, and to that he aswers.

1. On the 20th of June, 1849, some eight months after the division, the defendant wrote S. C. Field, (plaintiff's exhibit 241), thus:

"*Dear Sir*—Although our boat trembles much, I desire to say to you that I think you had better not make any new disposition of the land contracted to Clough, or any of the forfeited lands set off to me or to Martin, till you hear further from me." (Record, 441.)

This letter answers the oath of the defendant on this subject. It shows that lands had been set off to Martin, as much as it shows that they had been set off to the defendant. This letter not only shows that lands had been set off to Martin, but it shows that S. C. Field knew what lands they were that had been so set off.

2. But we now call attention to plaintiff's exhibit 260, which is the original schedule of division, in which said lands are set off.

The following is the head of said exhibit:

"ACCOUNT OF SALES ON DIVISION—BROOKS, FIELD & CO., OCT, 1848." (Record, 455 to 470.)

No. Clm.	No. Warrant.	Name of Warrantee.	Sec.	Tp.	R.	Taken at By B. & F.	Taken at By Martin.

This schedule has some fourteen pages. Each page has the No. of the claim, the No. of the warrant, the name of the warrantee, the section, town and range, and the words, "taken at by B. & F.," and "taken at by Martin," at the head of it, and every word and figure of it is in the defendant's handwriting. The value placed on all tracts of land set off to Martin is stated under the name of Martin in one column, and the value of those lands taken by Brooks & Field, is placed under the letters B. & F. in another column, showing which went to Martin and which to Brooks & Field. This certainly sets off the lands of Martin to him in both name and form.

3. The memorandum of settlement, plaintiff's exhibit, No. 262, (Record, 481 to 483), says:

"Memorandum of settlement made this 1st day of November, 1848, by DeLorma Brooks, S. C. Field and Warrick Martin of their respective interests in the proceeds of their operations in soldier's claims and land warrants, pursuant to their association in June, 1847, at New Orleans."

We quote further as follows:

"They apportion and set off to the share of Warrick Martin lands, and claims on lands, as specified in the schedule, and estimated and set off in parcels, amounting, in the aggregate, to $20,925."

"They also set off to the share of Brooks & Field, lands, and claims on lands, as specified in the schedule, amounting, in the aggregate, to $30,618."

These extracts show the lands set off in that schedule, were those of Brooks, Field and Martin, and the very terms employed in the extract from the answer, in denying that lands were set off to Martin, are, in the above extracts from the memorandum of settlement, used by the defendant in stating they were set off. The exhibit says they apportion and set off to the share of Warrick Martin

lands and claims on lands, &c. The name of Martin is in this way carried through the exhibit. Martin's share of the assets and profits is stated. Martin's share of the liabilities is set forth. Interest paid Martin for advance is stated. The fact that Martin's share was left in the hands of Brooks is stated. Martin's share of the warrants, money and property divided, is also stated; and the name of Warrick Martin is signed to the document, by the defendant, as his attorney.

We also cite Books 1 and 3 on file in the case. These books were in possession of the defendant at the time he wrote his answer, and swore as above. They contain a copy of the schedule, though they do not contain quite all the lands in the schedule, having been made out previous to that document, and before all the lands were entered. We ask special attention to these books, because they show the letter "M," written by the defendant over those warrants and lands, which, in the schedule, are set off to Martin, and the letters "B. & F." over those warrants and lands which, in the schedule, are set off to Brooks & Field. We also find in these books, the valuation, at which the lands in the schedule were set off to Brooks & Field, and to Martin, and that they are the same in the books and the schedule, showing that these books have the division, set forth in the schedule, transferred to them by the defendant himself. In addition to all this, these books contain, not only the Nos. of the warrants, the names of the warrantees, and the sections, towns, and ranges, the same as the schedule, but they contain a full and complete description of the quarters, and parts of quarters, located by the warrants, giving us the complete form or legal description of each tract of land. In these books we also find the name of Martin written over the lands, which, in the schedule, are set off to Martin, part written by the defendant, and part by B. F. Field.

For the purpose of evading the force of this evidence, the defendant swore that the name "Martin" was written over these lands by S. C. Field; but an examination and the desposition of B. F. Field showed that S. C. Field had not written one of them, but that they were in the handwriting of the defendant and B. F. Field. B. F. Field swore that the letter M. written by the defendant in

said books, indicated the lands that were set off to Martin, at the division; and the letters B. & F. indicated the lands that were set off to Brooks & Field, at that division. Said B. F. Field also stated, under oath, that he wrote the name "Martin" over said lands, under the order, and by the direction of, the said defendant, who stated as a reason for said order, that, if any dispute should thereafter arise, as to whose lands they were, or to whom they were set off, said Field might be able to recognize his own writing, and swear to the fact, the books being left in the hands of the defendant. See deposition of B. F. Field. (Record, 706 to 713.

4. In proof that lands were set off to Martin, and that the money received from said lands, after they were set off, was treated as the money of Martin, we copy the following receipts given by defendant to B. F. Field:

"Rec'd, Nov. 23, 1848, of B. F. Field, on account of Brooks & Field, and Martin, five hundred ninety 37-100 dollars, one hundred and twenty dollars of which was on account of moneys received by Geo. B. Field." (Record, 330.)

"Rec'd, Sheboygan Falls, October 10 and 11, 1849, of B. F. Field, on account of Brooks, Field & Martin, fourteen hundred forty-six 95-100 dollars, ($1,446.95), cash, and note for ten hundred eighty-nine 91-100 dollars ($1.089.91), as stated in the statement of Field's account with said Brooks, Field & Martin.

DE LORMA BROOKS."

"Rec'd, June 18, Sheboygan Falls, of Benj. F. Field, five hundred and two dollars on account of Brooks, Field & Martin.

(Record, 330.) DE LORMA BROOKS."

These receipts for Martin's money commence before the settlement was completed, but after the schedule had been made up.

5. We next refer in proof that lands were set off to Martin and were afterwards kept separate from the land of Brooks & Field, to

all the accounts rendered by B. F. Field to the defendant, from the 8th of November, 1848, till the 11th October, 1850. These accounts kept up the division, as set forth in the schedule, and give the numbers of the warrants, and the descriptions of the lands as set forth in Books 1 and 3, showing how much money, in each account rendered, came from the lands of Martin, how much from the lands of Brooks, and the amount from those of S. C. Field. Said accounts are numbered as follows: Plaintiff's exhibits Nos. 60, 61, 62, 63, 64 and 65, and plaintiff's exhibits A H and A E, and Nos. 328, 332, 333, 335, 336, 337, 338, 340, 342, 343 and 411. (Record, 1028 to 1034, 1044, 1056, 301 to 310.

We cite the deposition of the following witnesses to the same point:

1. B. F. Field, who was present at the division, in his deposition swears said lands were set off to Martin. (Record, 706 to 713.)

2. The deposition of G. B. Field, who was present at the division, interrogatory 21, that said division was made, and that the lands of Martin were set off to him.

3. S. C. Field was also present at the division, and in his deposition, interrogatories 112, 99, 153, 154, 155 and 156, swears said lands were set off to Martin in "name and form." (Record, 358 & 359.)

4. John M. Gilman, who was also present at the division, and set off Martin's lands, says, interrogatories 2, 3 and 4, that said lands were set off to Martin, and that he set them off. (Record, 206.)

5. H. H. Gray testifies that the defendant, on the 2d Sept., 1852, assigned as a reason for charging him 25 per cent interest on certain collections made by said Gray, that the land and contract of sale belonged to Martin, and the rate of interest said contract bore had been reported to Martin, and that Martin would expect him to

pay 25 per cent on said contract, and therefore the defendant charged and Gray paid, said rate of interest. (Record, 693.)

But the defendant relies on Book 4, on file, to prove that no lands were set off to Martin, because, in that book, the name of Martin is not written over any lands. But if this proves that none of the lands in said book belong to Martin, it also proves that none of said lands belong to Brooks; for the name Brooks is nowhere written over lands in said book. The name of Field is the only name written over lands in Book 4. The lands set off to Martin in the schedule, and in Books 1 and 3, are, in Book 4, kept separate from those set off to Brooks & Field. S. C. Field and B. F. Field receipt for Martin's lands on pages 1, 2, 3, and 21, and S. C. Field receipts for a portion of the lands of Brooks on pages 24 and 25; and B. F. Field receipts for the lands of Brooks & Field, under his charge, on page 50 of Book 3. In all these receipts, the division of the lands, as set forth in the schedule, and in Books 1 and 3, is kept up. To verify all these statements nothing is needed but to compare the warrants and lands in Book 4 with those in the schedule, and in Books 1 and 3. But the defendant has stated in his answer (Record, 85) that S. C. Field, and B. F. Field, in receipting for the lands set off to the complainant, acknowledged them to be the lands of the defendant, and receipted for them as his property, and not the property of the complainant. If this were true, it would not, in any way, affect the right of the complainant to said lands; but there is no truth in the statement. The facts are against the defendant here again, and against his oath. S. C. Field and B. F. Field both testify (Record, 710, 711, 712, 716,) that at the time of the division, and ever after, till the filing of complainant's bill, they supposed said lands belonged to the complainant, and that at the time of the division, and ever after, till the filing of the bill, the defendant professed to be the agent of the complainant, and to hold said lands for him. The pretence of the defendant, relating to this matter, is also shown to be untrue, by the fact that B. F. Field, after the division, and after the signing of said receipts, always, up to October, 1850, or so long as he had control of the business, as the agent of the defendant, kept and

reported the lands and cash of the complainant separate from those of the defendant, as shown by the accounts hereinbefore cited under this head. We also call attention to the receipts themselves, given by S. C. Field and B. F. Field for the lands, to show the statement of the defendant untrue. The receipts given by S. C. Field, for the lands of the complainant, are to be found on pages 1, 2 and 3, of Book 4, and that given by B. F. Field for the lands of complainant, is on page 21 of said books, and all of said receipts state that said lands are held "subject to the order of De Lorma "Brooks," and no more. The receipts given by S. C. Field for the lands of the defendant, left in the charge of said Field, as his agent, are on pages 24 and 25 of said Book 4, and state that said lands "are the property of De Lorma Brooks." Martin's lands were then receipted for and held by S. C. Field, as the agent of the defendant, not as as the property of the defendant, but simply subject to his order and control as the agent of Martin; but the lands of the defendant, left in charge of S. C. Field, were held by him, and so expressed, as the property of Brooks.

The Legal Effect of the Division and Settlement in the Fall of 1848.

1. The bill states (Record, 12) that said division was made of said 70,000 acres of land, that the interest of Martin was determined and set off to him, in name and form.

2. The answer (Record, 69, 85,) admits that Brooks and Gilman went to Wisconsin at said time, to obtain a settlement with S. C. Field, and a division of the property of Brooks, Field & Co., and we have shown, at length, that said division and settlement was made, and that the interest of Martin was set off to him, which consisted of lands, and claims on lands sold, but not conveyed, and therefore called, in the bill, lands.

3. The bill sets forth (Record, 21, 22, 23, 24 and 25) the lands that, at said division, had been set off to Martin and Brooks, and that then remained unsold, but says nothing about those set off to Field.

4. In the prayer for relief, the bill (Record, 30) makes the following request of the court:

"And that the said defendant may be adjudged, decreed and compelled to convey to your orator, free from all incumbrances made or suffered thereon by said defendant, all the lands set apart and divided to your orator in name and form, in the said division of lands between your orator and said Gilman, said defendant and said S. C. Field, as stated in this bill: and that in case any of such lands so set apart to your orator, have been conveyed or disposed of by said defendant since said division, that then and in that case, the said defendant may be adjudged to so convey all such lands now held by said defendant, and from the lands set apart in said division of lands to said defendant, a number of acres (of like value) equal to the number of acres of lands so disposed of by said defendant; and that in case the said defendant has not now on hand such equal number of acres of such land so set apart to said defendant, to supply what he has so disposed of, of the lands set apart to your orator as aforesaid, that then and in that case, the said defendant be adjudged and decreed to pay to your orator the present cash value of all such lands so set apart to your orator and since disposed of by said defendant; and that the said defendant set forth and discover the exact legal description, by section, sub-division of sections, township and range, and in what county and State situate, of all the said lands so set apart to your orator, and the present cash value of each and every of said pieces of said land: and by like definite description set forth all the said lands, if any, disposed of, or conveyed, by said defendant, and the present cash value of each and every piece of said lands so disposed of respectively; and when, and to whom, and for what sum sold respectively; and what bond, note, property, money, or thing or value, did the defendant receive, and holds therefore, respectively; and that after such conveyance, or judgment for value of such lands so set apart to your orator, the said defendant may, in said account so to be stated by him, as hereinbefore prayed, be properly credited therefor; and that of the balance of said account when so stated, your orator may be decreed and adjudged entitled to that proportion

thereof, which by said articles of agreement he would have been entitled to, if said pretended purchase on the said 28th day of June, A. D. 1848 had not been made."

5. The decree of the court, ordering the reference to a Master, sets aside the sale, affirms the division and settlement in the Fall of 1848, and confines the accounting to the lands and assets set off to Martin at said division, and to any money, that had come into the hands of Brooks since the division, resulting from the lands and assets so set off to Martin. (Record, 586, 587 & 588.)

6. The second order of reference is still more specific, in confining said Master to said division and to the lands and assets therein set off to Martin, and to the money coming into the hands of Brooks therefrom. (Record, 1107.)

7. Said Master has given Martin nothing that was not set off to him at said division; and in the final decree, the court modified the Master's report and deprived Martin of $8,000 cash, not because said money had not been set off to Martin, but because in making up the items of the account of the cash stated in the memorandum of settlement to have been in the hands of agents and to belong, one third to Martin, the Master was compelled to go back of the division, to ascertain how much money was then on hand, and to state and prove the same. See Master's reports. (Record, 608 & 1108.) See judgment of the court reforming Master's report. (Record, 1189 & 1190.) Final decree. (Record, 1190, 1191, 1192, 1193 & 1194.)

That the partnership between Brooks, Field, and Martin, was intended to be disolved and was disolved at and by said division, appears from the following evidence.

1. The schedule of division, (Record 455 to 470), and the memorandum of settlement, (Record, 481 to 483), first set off the interest of Martin, and until that was done, the interest of Brooks & Field remained together and joint, but Martin's interest was separate, while theirs still remained joint.

This of itself, the withdrawing of one partner and his large interest, would have disolved the firm, even if Brooks & Field had still remained together.

2. But immediately after the separating of Martin's interest from from those of Brooks & Field, Brooks & Field proceeded to make a division and settlement between themselves of what was set off to them jointly. On the 3d page of the memorandum of settlement, (Record, 483) we find the following:

"Said Brooks & Field also proceed to divide and apportion to each his respective share in their joint interest, setting off to the share of S. C. Field lands, claims, &c., to the amount, as per schedule, of $17,940.33, which is subject to a debt of ten thousand eight hundred and fifty dollars and thirty-four cents, ($10,850.34), due from S. C. Field to said De Lorma Brooks, and said share of said Field is to be held by said Brooks till said amount of debt, with interest on the same from date at the rate of six per cent. per annum, be paid to him (said Brooks) at New Lisbon, Ohio, from the first moneys realized from said share of said Field; and all moneys derived from said share of said Field, deducting the proper expenses of agency, &c., are to be paid said De Lorma Brooks till said debt, with accruing interest, be paid."

On pages 471 to 480, of Record, we find the schedule of division between Brooks and Field, showing their joint assets, divided, and what each one got, thus completely separating all the interests which had been in the firm, and effecting an entire dissolution of the partnership connection.

3. The answer, (Record, 69), shows that the object of Brooks in going to Wisconsin, and in taking Gilman with him to represent Martin, at that time, was to get S. C. Field out of the firm, though he professed to want to get Martin out, and he says in his answer, and the facts show, he succeeded.

4. The correspondence after the division shows the firm disolved,

and that Field was no longer the partner of Brooks. Letter of Brooks to Hussey, (Record, 428), calls Field his "late partner in land operations." Letter to B. F. Field. (Record, 294.)

5. The land of S. C. Field remained under the control of Brooks till the debt of Field was paid; and until October 1850, the lands of Brooks, of Field, and of Martin, were kept, sold, and reported separately. Though all the money for sales went to Brooks, the sales were reported separately on each one's lands, showing the interest of those, who had composed the firm, was separate. See accounts. (Record, 304, to 310, and 1024 to 1034.)

6. We refer, also, to the deposition of Brooks, showing that after the division, the name of the firm was not used even in renewing paper. (Record, 686.)

The decree sets aside the sale from Martin to Brooks, made in June, 1838, leaving the rights of Martin as they would have existed if the sale had not taken place. If the sale had never been made, and Gilman had, in the Fall of 1848, pretended to represent Martin, but without authority, in a settlement of the business and division of the assets; it is obvious that Martin could have elected to repudiate or affirm the act of this agent acting without authority. Therefore, Martin, in this suit, claims to affirm and receive the benefit of that settlement. This is the view of the cause taken by the court below.

Field is not a Necessary Party.

1. Because, as we have shown, the assets were divided and the interests of each one of the parties set off to him, and the firm dissolved in November, 1848. (Record, 455 to 470, 471 to 480, 481 to 483.)

2. We claim nothing, and the court and the Master have given us nothing, which was not set off to us in that division, and that division and settlement we affirm. (Record, 586, 587, 588, 1107, 1190, 1191, 1192, 1192, 1189, 1190.)

3. The assets set off to us at that division did not go into the hands of Field. They went into the hands of Brooks, and he has since then remained in possession of them, and enjoyed their benefits. (Record, 481 to 483, 301 to 310, 1028 to 1034.)

4 Field has committed no fraud upon us. We have no complaint to make against him. He has not now, and never had, any of our assets. We claim nothing of him; he claims nothing of us. He is in no way interested in our success or defeat in our suit against Brooks. We are satisfied Field did not get any more at the division than belonged to him. He is satisfied we did not. He is not, therefore, a necessary party.

5. By being confined to the settlement of November, 1848, Martin has lost at least $10,000, in cash and land warrants then on hand, and stated in the memorandum of settlement to belong, one-third to Martin, one-third to Field, and one-third to Brooks. Martin's share of this cash and of these warrants went into the hands Brooks, as well as the lands and claims on lands which were set off to Martin. But, although the papers of settlement stated one-third of these belonged to us, the amount of cash and the number of warrants were not stated in said papers, and to ascertain and state an account of these, the master was compelled to go back of the division, which the court would not allow. We, therefore, lost the money and the warrants. If Field had been made a party, our decree would have been at least $10,000 more against Brooks. We have never had any objection to make Field a party, but have seen no necessity for it or propriety in it. We would have no objection now, only we have already been engaged more than six years in this suit, at great expense and much labor, and we do not wish to spend six years more. We wish the decision of this court to be final in the case, if possible.

When the court can grant the relief proper between the parties, without affecting the rights of proper parties not before the court, the non-joinder is no objection to the relief proper between the parties.

Venable vs. *U. S. Bank*, 2 Pet., 107, 112.
Story vs. *Livingston*, 13 Pet., 359.

An objection for want of parties will not prevent an appeal, unless the party omitted is indispensably necessary.

Merchants' Bank vs. *Seton*, 1 Pet., 299.

If the court should hold that Field is a necessary party, the cause would be remanded to the Circuit Court, with directions to permit an amendment of the bill by making him a party.

Lewis vs. *Darling*, 16 How., 1.

Brooks. contrary to all the evidence in the case, continues to insinuate that S. S. Field had charge of the business, and appointed B. F. Field an agent, after the division in the Fall of 1848; but the following evidence shows, that so long as S. C. Field and B. F. Field had anything to do with the business after the division, they acted as the agents of Brooks.

AFTER THE DIVISION S. C. FIELD WAS THE AGENT OF BROOKS.

1. Said S. C. Field had, up to June 8, 1852, not even the control of the assets set off to him at the division, nor could he dispose of one acre of his land without the consent of the defendant. All of the assets divided to S. C. Field at that time, were, by written agreement, put by said Field under the absolute control of the defendant, as security for the debt of said Field, to the interest of the complainant and the defendant.

EVIDENCE.

See Book 4, page 50, on file.

Also, accounts B. F. Field and C. D. Cole. (Record, 304, 310, 876 & 872.)

Memorandum of settlement. (Record, 481 to 483).

2. After the division, S. C. Field had no control at all over the great body of assets in the north part of the State of Wisconsin; and with the assets set off to complainant and defendant, in the south part of Wisconsin, the north part of Illinois, and the east of

Iowa, S. C. Field had nothing to do except as agent of De Lorma Brooks. It is worthy of remark, that defendant, who has said so much against S. C. Field, representing him as unworthy of confidence—after he had obtained a settlement with said S. C. Field—after he had succeeded in getting the partnership dissolved, and S. C. Field out of the firm—and after all the assets of said Field that were set off to him, had been assigned to the defendant as security for the debt of Field—the defendant *constituted and appointed the same S. C. Field his agent* to attend to those lands in the south of Wisconsin, the north of Illinois, and the east of Iowa, that had been located, under the orders of the defendant, by said Field; and after said division, S. C. Field never attended to any of the assets, so set off to the complainant and the defendant, *except as the authorized agent of the defendant.* That the defendant appointed S. C. Field his agent, immediately after the division, appears from the following receipt given by S. C. Field, in Book 4 on file, page 1:

1. "The above lands are held by me subject to the contracts of sale specified, *as agent for De Lorma Brooks*, and subject to his order, and the contracts and proceeds. S. C. FIELD, November 28th, 1848."

2. The letters of Brooks to S. C. Field, after the division, show said Field was acting under Brooks. (Record, 431, 441).

On the 3d January, 1849, the defendant wrote B. F. Field, showing that the partnership was dissolved, and the partnership affairs settled up, at St. Louis in the Fall of 1848, and that those who, since that time, had acted in said business, had been the agents of the defendant:

"After surmounting, with much anxiety and persevering exertion, the many obstacles which thrust themselves in the way of a satisfactory adjustment of our partnership affairs, and thus, as I flattered myself, freeing myself from annoyances that had given me great pain, I allowed myself to revel in mental anticipation of a

future that should furnish no ground of complaint or disappointment on account of the negligence or delays of any I had confided in as agents."

B. F. FIELD WAS THE AGENT OF BROOKS, AFTER THE DIVISION.

EVIDENCE.

1. On the 21st page of Book 4, on file, B. F. Field gave the defendant a receipt for one hundred and sixty-four locations of land, all of which had been set off to the complainant, which receipt reads thus:

"The lands on which the fore-mentioned land warrants, beginning on folio 3, at warrant to James Z. Smith, No, 1984, and including 164 locations, are held by me, as agent for De Lorma Brooks, and the same, with the proceeds of all sales thereof, are held by me subject to the order of De Lorma Brooks."

"B. F. FIELD.

"Executed the 28th Nov., 1848, at St. Louis."

2. B. F. Field receipts for the lands of Brooks and S. C. Field, as agent of Brooks.

On the left hand side of folio 50, of Book 4, on file, B. F. Field receipts to Brooks and Field, jointly, for the lands set off to them, under date of Nov. 10th, 1848; but, after the arrangement between S. C. Field and the defendant, to leave the lands of said S. C. Field in the charge and under the control of the defendant, till the debt of Field was paid off; B. F. Field, on the right hand side of folio 50, Book 4, on file, receipts for the lands of the defendant and S. C. Field, under date of Nov. 28, 1848, as the agent of De Lorma Brooks, as follows:

"Pursuant to an agreement, made this day, by De Lorma Brooks and S. C. Field, all the lands, &c., referred to in the forego-

ing statement, and across which there is no writing in red ink, are held by me subject to the contracts of sale specified to some of them, as agent for De Lorma Brooks; and said lands, and the proceeds of the sales thereof, are held by me subject to the order and direction of said De Lorma Brooks. And all the lands, &c., referred to, in the foregoing statement, across which the name of *Field* is written in red ink, are hereafter to be held by me, subject to the contracts specified to some of them, as agent for De Lorma Brooks, and subject to his order, till he shall have been paid, at New Lisbon, Ohio, from the first money to be received on all the locations specified on the foregoing pages, or folios, from 24 to 50, inclusive, across which the name *Field* is written in red ink, the sum of ten thousand eight hundred fifty dollars and thirty-four cents, ($10,850.34) with interest from date till paid; after which the remainder is to be subject to the order of S. C. Field.

"BENS. F. FIELD.

"St. Louis, Nov. 28, 1848."

3. Deposition of B. F. Field. (Record, 240, 241, 254.)

4. All the accounts rendered and receipts given by B. F. Field, in connection with the business, were given and rendered to Brooks alone, including those for the lands set off to S. C. Field. (Record, 301, 304, 306, 308, 310, 322, 323 to 332.)

5. Letters of Brooks to B. F. Field. (Record, 294, 295, 296, 301 to 332.)

6. The following letter in particular: (Record, 296.)

"I am fully pursuaded now, that in a full exercise of judgment and sense of propriety, you could never, for a moment, entertain so preposterous an idea of the relation of principal and agent, as to claim, as matter of right, the privilege of an agent, to force his agency on a principal whose interest or choice demands a change or discontinuance. Your good sense, if allowed free and deliberate exercise, would instruct you that an agent, wishing to retain his

agency, should so conduct it as to make it the desire, as well as the interest, of the principal to retain him, and that an agent, qualified by capacity, acquirements and fidelity, does himself great injustice and discredit by seeking to retain an agency against the free choice and true interest of his principal."

We quote from this letter to show that said Field was the agent of the defendant; and because we are pleased with the sound views the defendant expresses respecting the duties of an agent to his principal, and we hope that these views, coming as they do from the defendant himself, may be enforced by a decree in this case.

On page of Record, 700, Brooks swears that B. F. Field was employed by S. C. Field, and that he never was the personal agent of Brooks.

That C. D. Cole and George C. Cole were the agents of Brooks, is admitted by him, (Record, 699 & 700), and if it were not, it could be proved from the Record.

S. C. Field, G. B. Field, B. F. Field, C. D. Cole, G. C. Cole and H. H. Gray, paid over to Brooks all they ever received from said business, as the agents of Brooks:

Deposition of Brooks. (Record, 698, 699 & 700.)
Deposition of S. C. Field. (Record, 713, 714, 715 & 716.)
Deposition of B. F. Field. (Record, 707 & 708.)
Deposition of H. H. Gray. (692, 693 & 694.)

That the Coles paid over all they received appears from the deposition of Brooks, (Record, 699 & 700), and their accounts and letters sent Brooks. (Record, 919 to 1018.

Statute of Limitations.

There are but two sections of the statute of Wisconsin to be considered. R. S. 1849, ch. 127, p. 644: Sec. 2[illegible]: "Bills for relief on

" the ground of fraud, shall be filed within six years after the dis-
" covery by the party aggrieved of the facts constituting such
" fraud, and not after that time."

Sec. 27: " Bills for relief, in case of the existence of a trust, not
" cognizable by the courts of common law, and in all other cases
" not provided for, shall be filed within ten years after the cause
" thereof shall have accrued, and not after."

This bill was filed and subpœna served in August, 1857, (Record, 32, 33 & 34), and sec. 27 would not, therefore, bar the suit, if it came under that section, as the bill was filed before the expiration of the ten years. Sec. 26 does not bar the right, until six years after the discovery of the fraud. We shall now show, that the fraud was not discoved till in the Fall of 1856.

The following is the statement in the bill.

1. " Your orator further says, that after said 28th day of June, 1848, the said defendant labored not less to conceal the great fraud he had on that day committed as aforesaid, than he had before then to perpetrate it. That he continued to write letters to your orator, who was all the time, till the Fall of 1856, detained in the South, extricating himself from the embarrassments of his affairs; and in those letters, written during several succeeeding years, always complained of the difficulties he had, growing out of his said purchase of your orator's interest, and of the bad conduct of said Field towards him, and in one of said letters spoke of the difficulty he had in meeting the time drafts of 18,000 dollars paid your orator as aforesaid; and by these letters, and the conversations of your orator and said defendant during a visit he paid your orator at New Orleans, in the Winter of 1848 and 1849, the said defendant hoped so, and did, keep your orator fully deceived as to the great fraud practiced upon him by said defendant on the 28th June, 1848, as before stated herein.

"Your orator further says, that in the Fall of 1856 he paid said defendant a visit in Beloit, Wisconsin, and seeing the great amount of wealth in said defendant's possession, began, for the first time, to suspect that said defendant had cheated and defrauded your orator in the said purchase of your orator's said interest; that in an accidental meeting between your orator and the said S. C. Field, during said last mentioned visit, said Field introduced, in conversation with your orator, the subject of said land warrant business, and remarked to your orator, 'We' (meaning said defendant, your orator, and said Field) 'all make well out of it.' This led to a conversation, fully, between your orator and said Field, in which said Field frankly communicated to your orator all the facts concerning said business, and thus enabled your orator to ferret out and discover the great fraud," &c. (Record, 20).

2. The answer is on pages of Record 83, 84 and 85, and admits the visit of Martin to Wisconsin in the Fall of 1856 as stated in the bill; and also admits, in effect, that Martin had not, previous to that time, discovered the fraud, by stating that Field did not enable him to discover it at that time, and by the additional statement that there was not then, and never had been, any fraud to discover.

3. We refer here to the deposition of S. C. Field, as sustaining the bill, and showing the ignorance of Martin of everything relating to the business, and also to show how, when, and under what circumstances, said Field gave Martin the information, and the papers, letters and documents, by which Martin was, as the bill states, able to ferret out and discover the great fraud. (Record, 359.) The letters of Brooks to S. C. Field, and the other papers and documents which S. C. Field then handed over to Martin, are, on pages of Record 363, 364, 365, 366 and 367, attached to the deposition of S. C. Field. The letters and papers which Martin afterwards obtained from B. F. Field, and G. B. Field, are, on pages of Record 245, 246, 247 and 248, attached to the deposition of B. F. Field.

4. It is stated in the bill and denied in the answer, that after the

28th of June, 1848, to the Fall of 1856, Brooks had labored no less to conceal the fraud than he had previously to perpetrate it. We refer to the following evidence to sustain the bill:

1. It is conceded in the answer that on the 28th of June, 1848, Brooks gave Martin $12,000 in time drafts at 35 days date, and $6,000 in time drafts at 65 days date. These drafts were dated, as is also admitted, on the 26th of June, 1848. The first $12,000 matured on the 4th day of August. On the 5th day of August (Record, 292), Brooks wrote Martin that he had difficulty in raising the money to meet the drafts, and that his anxiety about the matter had come near bringing him to sickness; that he had apprehensions about the $6,000 falling due on the 4th September, but he would not fail for want of exertion, if he lived; that the disturbances in Europe had greatly retarded the sales of lands, and deranged matters generally.

Now, the statements in this letter were intended to produce, and did produce, upon the mind of Martin, then in New Orleans, the impression that Brooks had rather a hard time of it, and that the drafts of the 4th of September, might fail of payment, and indeed that his great anxiety of mind, might be the means of his death, and that Martin might lose the $6,000 altogether. A little examination of the evidence of which we are now in possession, shows that there was no truth in any one of the three statements. 1. He admits in his answer, (Record, 79), that he had on the 26th of June, 1848 $8,000, on deposit in Ohio, with B. W. Snodgrass & Co., a fact which is stated in the bill. 2. He received from B. F. Field, July 13th, $2,000, and July 24th, $4,126.10. (Record, 330 & 331.) These three sums, (to say nothing of the fact as herein before shown, that the firm had $24,000 cash, and $28,000 bills receivable on hand, at the time of the sale,) make $14,126—$2,126 more than the amount of the drafts he then had to pay. His anxiety to raise these $12,000 could not have been very great, or he would not have sent and taken, in all, in the month of July, twenty-five warrants to Wisconsin, and had them located, when he could have sold them

for at least $4,000 cash. Nor is there less want of candor and truth in the statement that he had fears of not being able to pay the $6,000 maturing in September. He had just been in Wisconsin in the month of July, and knew the amount of receipts, and what he could depend upon. He, therefore, wrote B. F. Field, on the 31st of July, (Record, 292), that he expected from nine to ten thousand dollars, and certainly not less than seven thousand dollars, by the 28th of August.

His statement about the disturbances in Europe having retarded the sales of land, is also without any foundation in truth. Those disturbances caused emigration to the United States, and the books show that the sales in May, June, July, August and September, 1848, were greater than at any previous or subsequent period. There was great emigration to Wisconsin, and a perfect rush for lands. The lands on hand on the 28th of June, 1848, (see Book of Locations and Sales on file, and our statement herein), were 46,553 acres. The same book, admitted by Brooks, and reported by the Master, correct, shows locations in July, 1848, of 1,600 acres, in August 1,120 acres, and in September, 1,600 acres. Add these to the lands on hand June 28th, and we have 50,873 acres. The Master reports 40,335 acres of land on hand the 28th of November, 1848, showing that since the 28th of June, 10,538 acres had been sold—over 2,000 acres per month. This shows, that neither California nor ship fever, nor yet the disturbances in Europe, were retarding the sales of land, and making them "dull and slow," and that the letter to Martin, of the 5th of August, 1848, was written to deceive him.

2. The answer admits (Record, 84) that on the 28th of June, 1848, without any statement as to how many warrants belonged to Brooks, Field & Co., or how many locations of land had been made, Brooks gave Martin a note for $1,000, to be paid when all the patents except ten, were issued on the locations of Brooks & Field. The answer also admits, on same page, that this note had

never been paid, and that Martin brought it with him from the South in the Fall of 1856; and that upon the assurance by Brooks that said patents had not issued, Martin, on his arrival, gave the note up to Brooks, as valueless, without consideration. Now, if we can show that said patents had issued before this time, we will have shown that Martin was ignorant of the fraud of the 28th June, 1848; that Brooks was determined to keep him ignorant, and that to do this, Brooks practiced another fraud upon him in the Fall of 1856. There is evidence in the case, in the deposition of B. F. Field (Record, 262 & 263), that one warrant, for some cause, was cancelled; but for what cause, does not appear. There is, however, no evidence in the case, nor was there any effort to produce any, showing more than one warrant cancelled for any cause; and there is no evidence that a patent ever failed to issue on any warrant that was not cancelled. The deposition of B. F. Field, in whose name the lands were entered (Record, 263), says that before he left the business, the great part of the patents had been issued.

The following evidence will show, that all the patents on all the warrants and on all the locations of Brooks & Field, had issued years before 1856. On the 14th of March, 1849, only four months after the division, Brooks sent his agent, B. F. Field, 284 patents (Record, 294). B. F. Field ceased to be the agent of Brooks on the 11th November, 1850, and at that time (Record, 347), said Field had not received the patents for a few locations set forth in said exhibit, and, therefore, he deeded the lands named therein to Brooks in escrow—deed not to be placed upon the record till assurances were given him that the patents had issued. A list was furnished Brooks, and he immediately, in December, 1850, went to Washington and obtained the certificate of the Commissioner of the General Land Office, showing all the patents issued but four, and informed Mr. Cole that the patents had been sent to the post office at Green Bay, and been permitted to remain there uncalled for, and then returned to the dead letter office. They had issued long before, and it was no fault of the patent office, or of the warrants, or locations, if they had not been received. (Record, 856, 857 & 858.)

In the month of March, 1851, Brooks went again to Washington, for some purpose which he does not state. (Record, 859.) While there he had taken off, from the books of the General Land Office, a full list of all the warrants of Brooks & Field, showing the patents issued upon them, and showing patents issued for some forty or fifty more warrants than he concedes, in his answer, ever belonged to Brooks & Field. This list is numbered 424 and 425, and can be found in book, on file, called "Plaintiff's Exhibits." That it was made out by Brooks, at that time, and that it shows patents for all the warrants contained in the book on file, called "Warrant Book," reported correct by Master, will appear from pages of Record 859, 613 and 614, and deposition of Brooks, 695 of Record. Yet, notwithstanding these facts, in December, 1849, in New Orleans, he refused to give Martin $500 for the note (Rec. 520); and in April, 1855, when Martin wrote him about the note, he says he had forgotten giving it, and had only a dreamy recollection of it, but that the consideration had failed, if he had given such a note. (Record, 298.) In 1856 he reiterates the statement to Martin, that patents had not issued, and obtained the note, as he had the large interest of Martin, for nothing. The note was given up by Martin some time before he had the interview with Field, which led to the discovery of the fraud.

3. On the 24th January, 1853, (Record, 297, 298) Brooks wrote Martin a letter, without having received any from Martin to call it forth, which was intended to, and did, produce on the mind of Martin the impression that, owing to the conduct of Field, Brooks was in a truly bad condition. He had, he says, been disappointed in getting money to pay his taxes in Ohio; that his family could not enjoy the snow in Wisconsin, as others did, because they had no sleigh; and that *he*, meaning S. C. Field, had forced him (Brooks) to take a mill property, largely incumbered, for money that he ought to have paid over; and that this had kept him much embarrassed. A complete answer to this is the report of the Master, showing the condition of the business at the time of the division, and the amount of money Brooks was annually receiving, from

that time until the filing of our bill (Record, 615, 616 and up to 677); also, from the accounts of the net cash receipts by Brooks, from the time of the sale down to the filing of the bill, with references to the exhibits proving the items, contained in this brief, and showing received by him, this year, from sales, $9,200. Also, from the fact that in the month of ~~January~~ July, 1853, on the 12th day of that month, just eighteen days after he wrote this letter to Martin, he purchased the large and valuable A. L. Field farm, (Record, 90, 91) which he does not pretend he was forced to buy, for the sum of $10,000, (Record, 90, 91,) giving a mortgage on the same at 6 per cent. interest, for $6,000; and the November previous he had raised the price of lands to $3 per acre, (Record, 869); and in July following he raised the price of land to $3.12½ per acre, (Record, 875); and each year, as his account 3, on file in book, shows, paid off the principal and interest on the large and valuable mill property, which, in 1850 and '51, he had purchased from S. C. Field at a great bargain. Also, that, near this time, he invested $7,500 cash in the capital stock of the Bank of Beloit, and $1,500 in railroad stock. (Record, 93.)

4. On the 22d April, 1855, he wrote Martin, for the last time, about said $1,000 note (Record, 298), and in said letter he again speaks of the mismanagement of Field, and stated that he had been compelled to take from him a mill property largely incumbered; that Field had owed him $14,000, collected by him, and that on that account he had been much embarrassed, and that he then owed some $18,000 or $20,000. This still kept up the idea that Brooks had a hard struggle to get along, and keep his head above water. So Martin thought. But what are the facts? We answer: S. C. Field never owed the firm or Brooks $14,000, for anything. He was made to owe some $10,800 on the 28th November, 1848, all of which but $1,330 was for the capital which Martin furnished to said firm, and the exhibits on file show that Brooks received from the sales of Fields' lands the sum of $12,000 in payment of this debt, and interest. In 1850 and 1851, at which time Brooks purchased the mill, the debt of Field, for collections made as the agent

1699

of Brooks, was less than $5,000. So the exhibits and the deposition of Field show. (Record, 487, 487, 489, 490, 713, 714, 715, 716, 717, 718.) The proposition to buy the mill came from Brooks. Field swears Brooks was not compelled to buy it. But was Brooks embarrassed in 1855? His acts say he was not. In that year (Record, 93), he purchased with L. G. Fisher and R. H. Mills, $18,000 worth of lands, he retaining a half interest. In that year he received from the sales of lands (see statements, with items proved, in this brief), $14,380.29. In that year Brooks raised the price of lands (in June, 1855,) to from six to ten dollars per acre. (Record, 887.) These citations, we think, establish the statement of the bill, as to Brooks' trying to keep Martin in ignorance about the business after the sale, and show that Martin did not discover, and could not, without coming to Wisconsin, have discovered this fraud, and then not without the documents he received from S. C. Field. We know not what the court may think of this purchase by Brooks, but we do know what Brooks thought of it. He knew it was a matter that ought not to be known, and, therefore, for eight years he studiously concealed from Martin the real facts respecting the business, and from S. C. Field, G. B. Field, B. F. Field, H. H. Gray, C. D. Cole, and G. C. Cole, who had been connected with him in the sale of lands, the fact that said sale from Martin had taken place; and for fear it would be discovered, he carried the name of Martin all through the business. But why was Brooks, as late as 1853 and 1855, dwelling upon the debt of S. C. Field, when, whatever the amount of said debt might have been, it had been paid off, principal and interest, mostly in cash, and the balance in valuable property, in the years 1850 and 1851. (See Record pages above.) We rely upon these facts to sustain the bill and disprove the answer as to the efforts of Brooks to conceal said fraud.

But another conclusive answer to the claim of a bar by the statute of limitations, is, that the defendant has neither pleaded the statute, nor insisted upon it as a defence in his answer or otherwise,

Parker vs. *Kane*, 4 Wis., 1;
Foley vs. *Hill*, 3 Mylne & Craig, 481-2;
Goodrich vs. *Pendleton*, 3 John Ch., 384;

Kane vs. *Bloogood*, 7 John Ch., 134;
Bogardus vs. *Trinity Church*, 4 Paige, 178;
Chapin vs. *Coleman*, 11 Pic., 331;
Van Hook vs. *Whitlock*, 7 Paige, 381.

We have followed the defendant in this case from the commencement of the business on the 10th of June, 1847, to this time, and we think we have shown an intention of fraud in almost every important step of his progress, in connection with the business.

His concealing from Martin the issue of warrants; his investing money in warrants when he ought to have paid it over; his encouraging S. C. Field to buy warrants, when he knew Martin could not, in justice to himself, spare the money out of his business, and after he knew Martin had ordered Field not to buy; his countermanding the orders of Martin to have money sent to him; his ordering the Fields not to correspond with Martin; his ordering lands entered with nearly all the warrants instead of selling them, and then blaming it on the Fields; his keeping the entry of lands a secret from Martin for four months; his drawing on Martin for money to pay expenses, under the pretence of necessity, when he could have raised any reasonable amount, by the sale af warrants; his continuing the entry of lands, after Martin's protest against it, in a monetary crisis; his statement to Martin, in January, 1848, that he had failed to get an account from G. B. Field, when the account had been obtained; his false representations, about the business, made at that time; his refusal at all times to render Martin an account of the business, even that to which he attended himself; his sending Martin the only letter of G. B. Field in which he apologizes for not having rendered a particular account, and never sending any other letter; his inviting Martin to meet him in June, 1848, under pretence that "something might be done to hasten the liquidation of the liabilities of the firm"; his alternative proposition to buy or sell, when Martin was broken down in fortune and health; his statement that the business was in a woful and disastrous fix, when

it was in a highly prosperous condition; his statement that the means could not be realized from the business in one or two years to pay its liabilities, when the cash assets on that day were $25,000, and the real assets $83,000, over all liabilities; his dictating to Martin the terms of said purchase and refusing him any profits of the business and any consideration for his interest; his not showing and handing over to Martin the perfect account of the business, which he obtained in April, 1848; his having $8,000 cash on deposit in Ohio, and paying Martin only $685.88 and obtaining time drafts for the balance and paying them to Martin; his letters to Martin of August 5, 1848, January 24, 1853, and April 22d, 1855; his concealing from Field the purchase in the Fall of 1848, and up to 1856; his concealing from Martin the issue of patents on the locations of the firm; his answer in this case; his refusal before the Master to make out and present a true account of the business, and his efforts to prevent its being done; his efforts to impose upon the court a valueless bond, to obtain a *supersedeas* on appeal; are all the strongest evidences of fraud characterizing the conduct of the defendant from almost the commencement of the business to this time. It is for the court to say how far these frauds shall be rebuked, and whether the sale from Martin to Brooks shall be sustained, or set aside and relieved against.

MAT. H. CARPENTER,
Counsel for Complainant and Appellee.

1703

SUPREME COURT OF THE UNITED STATES.

No. 158.

DE LORMA BROOKS, APPELLANT,

vs.

WARRICK MARTIN.

THE COMPLAINANT'S REPLY TO DEFENDANT'S EXCEPTIONS TO MASTER'S REPORT OF JULY 1, 1860.

I.

The First Exception (1186 of Record) is a complete mis-statement of what the Master has done. The report shows that the Master has done precisely what the order of the Court required, and what this exception claims he should have done.

II.

The Second Exception (1187 of Record) is likewise a mis-statement of the facts clearly proved in the case before the Master.

1. Warrant, contract No. 22,705, $360, is the first specification by the defendant under this exception. This warrant and the land upon which it is located, were set off to complainant at the division.

Book 3, p. 12, on file.

Book 4, on file.

The land had been sold before the division for $200, payable in one year, with 12 per cent. interest; or, if not paid in one year, then 20 per cent interest was to be charged. It was not paid in one year, and the Master has charged the amount due at the maturity of the contract, $369, with interest at seven per cent. since that time. (Record 1112.)

The defendant, in his deposition before the Master, reported April 1, 1861, says that H. Cheney, of Beloit, Wis., owes him for this tract of land. Having disposed of the land, the defendant should be charged with it. (Record, 705.)

2. On warrant 2001, $1,200, received of Tattershall. This warrant, and the land on which it was located, were set apart to complainant at the division, and sold by defendant to Tattershall, September 5, 1857, a month after the suit was commenced. The consideration expressed in the deed is $1,200. (Record, 831.) And defendant admitted before the Master that the consideration was called and agreed upon at $1,200—that is, $10 per acre. (Record, 706.) The evidence before the Master shows that land in that neighborhood was worth that sum. This land was entered by H. H. Gray, agent of the firm, and in his deposition before the Master, p. 58 and 59 of Master's Report of evidence, he says the land he entered for Brooks, Field & Co. was of the best quality. (Record, 695.)

Plaintiff's exhibit 100 and 101, before the Master, which are the letters of defendant to his agent, Geo. C. Cole, dated March 6, 1856 (Record, 894, 895), and April 5, 1856, show the value of land in Sheboygan, Calumet and Manitowoc counties to be $10 per acre. Deposition of L. G. Fisher, before the Master, p. 46 and 47 of report of evidence, April 1, 1861, shows that of a great number of sales in those counties in 1855, 6, 7, 8, 9, and 1860, the average price was $9 per acre (Record, 690, 691); and that lands in the south part of Wisconsin were more valuable than in those counties, and that he, the defendant, and R. H. Mills paid $11 per acre for lands in the south part of Wisconsin and north part of Illinois, in January, 1856. (Record, 691.)

The defendant pretends that he took in payment for this $1,200, certain stock in a Manufacturing Co. in Beloit, and that it turns out not to be worth more than $100. The defendant gave no evidence before the Master that the land was not worth $1,200, does not even swear himself that he has ever tendered the stock to complainant, but claims that while the court should deny the complainant his share of re-investment in the A. L. Field farm, which was profitable, that the court should force the complainant to take this investment, which proves to be unprofitable.

3. No. 2858, received of E. Lockwood, $500 and $400. This warrant and land were set apart to the complainant at the division, and sold by the defendant to Lockwood in June, 1856, and May, 1857, and the sums, $500 and $400 were the considerations as expressed in the deeds (see exhibits before the Master, Record, 884). No proof is given that the land was not worth the consideration expressed in the deeds.

Again, two quarter sections of land, one belonging to complainant, and one to defendant, and near the Lockwood land, were sold in 1856 for $944 each, though the consideration expressed in the deeds is only $800 each. (Record, 704, 705.)

See the deeds, exhibits No. G and O, before Master. (Record, 833.)

Defendant's accounts, Nos. 1, 3 and 4. (Record, 1156.)

On the 6th of March and 5th of April, 1856, before these lands were deeded to Lockwood, defendant wrote his agent, Geo. C. Cole, that the price of land in Sheboygan, Calumet and Manitowoc counties should be raised to $10 per acre, and none should be sold at less than $8 per acre. (Record, 894.)

This land, at $8 per acre, would be $1280, and at $10 per acre, $1600.

Many of the exhibits show that the defendant often expressed a less sum than was received as the consideration in his deeds; but not a case is made out where he expressed a greater sum.

Deposition of Duncan McDonald says, defendant told him that he valued his lands in Wisconsin at from $10 to $25 per acre in Spring of 1857. (Record, 172, 173.)

4. No. 2843 warrant, received $500, $185, and $185. What defendant says in his exception to this item, is true in the letter, but untrue in its spirit. The land was set off in the first division to Brooks & Field, and as between Brooks and Field, it was divided to Field. A quarter section in Sec. 12, T. 17, R. 20, which was in said division set off to Martin's share, was by mistake deeded to Durand for the benefit of S. C. Field. When the mistake was discovered Field deeded to defendant this land, in place of the quarter section belonging to Martin, and defendant subsequently sold it for the sums charged above.

See deposition of S. C. Field. (Record, 720.)

See also Report of Master of April 1, 1861.

See also *Gilmore* vs. *Wilber*, 12 Pic., 120.

Defendant, in his accounts No. 2 and 3, does not credit Martin anything whatever for this land. In his account No. 4 he credits $300 as the value of the land of Martin at the time it was deeded to Durand for Field, instead of crediting Martin with what he received for the land he received in exchange for Martin's land.

This land, in 1853, when it was deeded to Durand, was worth as much as defendant sold the other land for.

In November, 1852, defendant wrote Cole to raise the price of lands to $3 per acre. At that rate this land of Martin's was worth $480 instead of $300. (Record, 869).

In July, 1853, defendant wrote to Cole to raise the price to $3.12½ per acre, $500. (Record, 876.)

On the 26th November, 1855, defendant raised price of lands to $4.16⅔ per acre, and none were to be sold at less than $3.50 per acre. (Record, 877.)

At $4.16⅔ per acre, $666.66.

At $3.50 per acre, $560.

This land was deeded to Durand in 1863.

5. The items $46, $137.88, $45, $90, $92.41, and $75—$466.29.

These charges are correctly made against the defendant. To prove the $36, see Exhibit 332, and Book 7, p. 14; Book 6, p. 6 & 11, on file; and Record, 1022 & 1023.

To prove the item $137.88, see plaintiff's Exhibit 186; Book 7, p. 14; Book 6, p. 11, on file; Record, 938.

To prove the item $45, see plaintiff's Exhibit 186; Book 7. p. 14; Book 6, p. 13, on file; Record, 938.

To prove item $75, see plaintiff's Exhibit 230; Book 7, p. 14; Book 6, p. 13, on file.

To prove the item $82.41, see plaintiff's Exhibit, before Master, 186; Book 6, p. 14; and Geo. C. Cole's account in a book, p. 9.

To prove the item $90, see Book 7, p. 14; plaintiff's Exhibit 186; Record, 938.

Five eighties were sold together, two of which belonged to Chubb & Schenck, and three to Martin. The above items are three-fifths of the several amounts collected on said sale. See plaintiff's Exhibit No. 186, before Master; Record, 938.

6. Warrant 3239, $204 from E. F. Cook. This warrant, and the land located by it, were set off to Martin in division, and sold by agent of defendant to E. Fox Cook, February 8, 1851, $250, $50 cash, and $200 on time, and security given for payment. (Book 2, on file, p. 127.)

7. Received of H. H. Gray $2,325.73; int. $861.84.

This charge of the Master is correct, for the following reasons:

On the 2d September, 1852, said Gray acknowledged an indebtedness to the defendant on warrants and sales of lands, set forth in plaintiff's Exhibits, before the Master, A, I, and No. 405, (Record, 1046,) of $1,644, principally from lands set off to the complainant; but said Gray was not required by the defendant, and did not pay said money at that time to the defendant, but gave the defendant additional security, and held said money on 12 per cent. interest, till the 30th April, 1856, when said principal and interest were paid. The Master has charged the defendant with complainant's share of the amount collected on said debt, on the 30th April, 1856, when the money was paid, less some $300 expenses. For the payment on the 30th April, 1856, see the deposition of H. H. Gray, and the deposition of L. G. Fisher, (Record, 693, 694, 691.) That the lands located by warrants, the numbers of which are given in plaintiff's Exhibit 405, are lands set off to complainant, see plaintiff's Exhibit 260; Books 3, 4 & 7, on file; and Record, 455 to 470.

In the second account of the defendant, he wholly omitted these sums collected by Gray, and swore before the Master that Gray had never rendered him an account; but, by accident, the complainant got possession of the account of Gray, signed by both the defendant and Gray, on the 2d September, 1852, and after seeing this account in the hands of the complainant, and hearing the deposition of H. H. Gray respecting it, the defendant, in his third account, gave the complainant credit with the original sums collected by Gray, but not with any of the four years interest that had accrued on said sums. In the 4th account of the defendant he has charged himself with the amount due, but not paid, by Gray, on the 2d September, 1852, but not with the amount due and paid on the 30th April, 1856.

III.

Third Exception complains that while the court denies to our share of the re-investments in the Field farm, that the Master should allow us our portion of the consideration paid by us. (Record, 1187.)

We still claim our 57-100 of the E. L. Field farm, and if the court had, on the final hearing, awarded it to us, according to the rule laid by the Supreme Court of the United States, in *Oliver* vs. *Pratt*, 3 How., 333, then of course this item of $2,800, the portion of consideration paid by us, and interest, should have been deducted. But the court refused us our interest in the farm, and this item is properly charged.

To show that eight quarter sections were exchanged for the Field farm, and that five of them belonged to Martin, see proof cited. (Record, 445 to 470, also, book 4, page 10, on file, and book 4, page 3.)

That the consideration, expressed in the deeds, for said five quarters was $2,800. (Record, 835, 836, 837, 838 & 839.)

The consideration expressed in the deeds for said five quarters is $500 per quarter, except two quarters which went in at $650 each, located in Rock county, Wisconsin, and Winnebago county, Illinois.

To show that the lands were worth more that $400 per quarter, which the defendant claims should be allowed, see the answer of defendant, which shows they went in at $500 per quarter. The entries made by defendant in his own book, No. 7 on file, at time of sale, show $500 per quarter. (Record, 92.)

November 23, 1852, the defendant advanced the price of lands in northern part of the State to $3 per acre, or $480 per quarter. (See plaintiff's Exhibit No. 34, Record 869.)

These lands were situate in Dodge, Green and Rock counties, Wisconsin and Winnebago county, Illinois, and were more valuable than the northern lands.

Mill property $1,840 and interest. As we do not claim our interest in said property, as a reinvestment, these are proper charges against the defendant. We will not inquire whether this money went into said mill purchase, but will prove that said money came from the lands set off to the complainant, and that it was paid to the defendant on the 31st of October, 1850.

1. The warrants from which said money was derived, are numbered as follows: 2354, 915, 903, 5858, 1796, 1790, 2065 and 2352, Exhibit for 9065.

2. These warrants and the lands which they located, were set off at the division to the complainant. (See plaintiff's Exhibit, 260, and books 1, 3, 4 and 7, on file, Record, 455 to 470

3. Said $1,840 were collected by S. C. Field, the agent of the defendant, from the sales of said land. See plaintiffs Exhibit No. 266 (Record 487, 488 & 489); plaintiff's Exhibits, before the Master, A., and A. I., and the deposition of S. C. Field, and deposition of the defendant. (Record, 713, 714, 715, 698 & 699.)

4. Said $1840 were paid to the defendant by S. C. Field, by the conveyance to him of one half of said mill property, on the 31st of October, 1850. See plaintiff's exhibit and the deposition of S. C. Field; deposition of the defendant and plaintiff's exhibit. (Record, 840, 842, 843, 487, 488, 489, 698 & 699.)

Said charge of $1,305.58 and interest, is correct, for the following reasons:

1. The warrants from which said money was derived and numbered as follows: 1948, 2779, 2922, 2029 and 2032.

2. These warrants, and the lands which they located, were all set apart to the complainant. See plaintiff's Exhibit 260, and books 1 and 3, and all the accounts of B. F. Field to the defendant, from November 8, 1848, to October 11, 1850; plaintiff's Exhibit, 328, 332, 333, 335, 336, 337, 338, 340, 342, 343, 411, A. H. and A. E. (Record, 455 to 470, 300 to 310.)

3. Said $1,305.58 were paid to the defendant, by the conveyance to him of one-fourth of said mill property on the 22d August, 1851. The payment was made by S. C. Field for B. F. Field, at the request of the defendant. See plaintiff's Exhibits S. and T.; plaintiff's Exhibit 268 and the deposition of B. F. Field, and depositions of S. C. Field and of the defendant, and defendant's accounts, 3 and 4 on file. (Record, 842, 843, 488, 489, 713, 714, 715, 698 and 699.)

The second account of defendant wholly omits these sums, but after we had proved up their payment to the defendant, in such a manner as to leave it impossible for him to evade the proof, the defendant, in his third account, charges himself with all the items composing said $1,305.38, except the item of $485, which he credits at $380 instead of $485. Why the defendant should except to the report of the Master relating to this $1,305.38, when his own account contains all these items, we are at a loss to determine. That the defendant should have credited the complainant with $485 for the land located by warrant 2032, instead of $380, appears from Exhibit 14 before the Master, and the deposition of B. F. Field before the Master. (Record, 862, 708 & 488.)

IV.

Fourth Exception. (Record, 1187 & 1188.)

All the items received by any one during said business were received by the defendant, and under his control; for the defendant has had the control of S. C. Field, G. B. Field, B. F. Field, C. D. Cole, and G. C. Cole, and the whole business, from its commence-

ment until now. The specifications, under this exception, we answer thus:

1. The warrants and lands from which these sums are derived, were set off to the complainant at the division. See plaintiff's Exhibit, Book B, No. 260, and Books 1 and 3, and the accounts rendered to the defendant by B. F. Field, from November 8th, 1848, till October 11, 1850, hereinbefore referred to by their numbers. (Record, 455 to 470.)

2. In plaintiff's Exhibit 260, and in Books 1 and 3, the value at which Brooks & Field took each warrant or tract of land that was set off to them, and the value at which Gilman took for the complainant, each tract of land and each warrant set off to him, is stated. The price placed on the tracts was generally uniform. For a forty acre tract $30 to $35. For an eighty acre tract $60 to $65, and for an one hundred and sixty acre tract $120 to $130. So that by examining the price at which a tract of land was taken, we can at once ascertain how large a tract was set off to the complainant, or to Brooks & Field. By the examination of the exhibit, and books above cited, we find that all of said sums specified by the defendant, under this exception, were set off to the complainant, and the proofs show all of said money was received by the defendant, though received before the close of the division on the 28th of November, 1838.

The Master has, in his Report of July 1st, 1868, (Record, 611 & 612), referred for proof to the page of the "Location and Sales Book," in which the proof for each one of the items is referred to, or cited. To this proof therein cited we now refer:

In the fourth exception of the defendant to the Report of the Master, of April 1st, 1861, the defendant specifies some $1,500, included in said cash received before November 28th, 1848, which he says had been set off to him, and some $2,300 which he claims had been set off to S. C. Field, but says nothing about the $2,500 included therein, that had been set off to the complainant. In answer thereto, we admit defendant's $1,500, but contend we have $2,500 in the same situation. The Master in making up his last

report under the decree of June 6th, 1861, has deducted the amount set off to the complainant, to the defendant, and to Field, and has given the complainant credit with the amount thus set off to him, in pursuance of the division, and the decree of the court; and he has not given the complainant credit with any item of cash that was not so set off, or that did not result from lands set off to him. (Record, 1132.)

V.

Fifth Exception. (Record, 1188). Item of $606.56.

No reason is assigned by the defendant why said $606 50 should not be charged to him, and we might therefore, dismiss the exception without further notice. We, however, briefly state why this is a proper charge.

1. Plaintiff's Exhibit, No 262, which is the memorandum of settlement concluded on the 28th of November, 1848, contains the following language:

"November 28, 1848, we add to the above that having since found other property and claims of the company, including an additional sum of $500 due from S. C. Field, amounting to $1,819.50, of which we set off to the share of W. Martin $606.50, and the balance, $1,213, to share of Brooks & Field." (Record, 483.)

Now, here are assets of the firm found after the schedule of division was made, which at the low valuation then placed on all assets, amounted to $1819.50, one third of which is said to belong to W. Martin. But these assets, thus falling to Martin, are no where set off to him in name or form. On the 25th July, and 6th August, 1860 (Record, 610), we made written demand upon the defendant to state an account of these assets, so that complainant could claim his one-third of them, but the defendant has refused to state any such account, and the Master, in the absence of any statement showing what these assets were, has charged the defendant with what the defendant states in the memorandum of settlement they were worth at said time, and interest on the same. The defendant certainly connot object to being charged with his own val-

nation of said assets, at the time of the division and settlement. If we are to be confined by the decree of the court to the division and settlement, of course the court intended to give us all the division and settlement give us; and these $606 50 are not in the schedule of division, but are given us in the memorandum of settlement, made out after the schedule. Had the defendant, in the memorandum of settlement, set said assets forth in name and form, and in detail, as he should have done, instead of stating their value, there would have been no question as to our right to one third of them; but as the defendant did not do this, but did state their value, and how much of that value fell to the complainant, we claimed, and the Master has properly given us, that value, and interest on the same.

VI.

Sixth Exception (Record 1188), the item of $4,314.77. Here again the defendant failed to show wherein the "Master has erred" in making this charge.

1. The "Result Book," reported by the Master correct on this point, pages from 6 to 33 inclusive, sets forth in detail all the items of debits and credits in the account of Brooks, Field & Co., from the 10th day of June, 1847, when said business was commenced, till the 28th of November, 1848, when the division was completed and the firm was dissolved, citing the proofs for every debit and every credit, charging no money that is not proved to have been received, and crediting all payments proved or claimed to have been made, and more than $8,000 sustained by no proofs or vouchers. We cite this book, not because the book itself is any evidence in the case, but because the book cites the proof for the items charged and credited, and we invite the defendant to an examination of the proofs there cited, by their numbers.

2. The account of said business made up on said pages of said book proves:

1. Cash received in said business up to November 28, 1848	$115,570	32
2. Cash paid for all purposes in said business up to November 28, 1848	114,421	14
3. Cash on hand	$ 1,149	18
4. Liabilities unpaid	8,410	45
Deduct cash on hand	1,149	18
5. Amount to be paid	$ 7,271	27

He has credited the defendant with every dollar there was even an indication the defendant has paid. And we now state to the court, that if we are to be charged with $8,846.90, and $7,797.80, principal and interest, as our share of the debts of the firm, stated in the memorandum of settlement to be $26,519.95, then we should have credit for these $4,314.77, and $3,728.57, principal and interest, being our share of the money on hand at the time of the division, as stipulated in the memorandum of settlement. But if the court should reverse said entry, and debit the defendant with said $8,846.90 and $7,797.80, and credit him with the actual amount paid by him for the interest of the complainant since the division, and interest on the same, then the complainant will not be entitled to said credit of $4,314.77 and interest. If, however, the court should sustain this exception of the defendant, and, at the same time, overrule our exception to said $8,846.90 and $7,797.80, then we are defrauded by defendant out of $8,043.34.

We add that the schedule of division (plaintiff's Exhibit, No. 260, contains no money at all. It divides only lands and claims on lands. The large amount of cash that had been received is not at all stated among the assets of the firm. It was designedly left out by the defendant, in order that this sum of $12,944.99 might be concealed. So, also, the memorandum of settlement, only contains a statement of the money that had been received on warrants resulting from claims before No. 327, in which the complainant was interested to the amount of only one-third; but nothing is said

in said memorandum of settlement, about money received after 327, and there is nothing in either the schedule of division, or the memorandum of settlement, from which it can be ascertained how much money had at that time been received from the sales of lands and warrants. (See the exhibit. Record 455 to 470, 481 to 483.)

VII.

Seventh Exception, (Record, 1188) $3,000 for Martin's interest. This is a bold attempt on the part of defendant to cheat the complainant out of some $6,000, principal and interest. The defendant had not the effrontery to make such a charge in his 2d and 3d accounts, but has now credited himself with $3,000 and interest since September, 1848, for a payment claimed to have been made to complainant for his interest in said business. The Master did right in refusing to give the defendant this credit, for the following reasons:

1. The defendant never paid the complainant $3,000, or any other sum, for his interest in said business. On the contrary, all defendant, or Brooks, Field & Co., did pay the complainant, including said $3,000, fell some $3,000 dollars short of paying the principal and interest due the complainant for advances; and the firm now owes him for interest on advances, and a part of the principal, $3,400, with interest on the 28th November, 1848. (See the "Book of Statements," on file, in which the account is made up, pp. 86, 87, 88 and 89.)

2. Said $3,000 were not paid as consideration for the interest of complainant in said business; but they were paid on a debt due the complainant for interest on advances to said firm. (See plaintiff's Exhibit 262, in which $2,523.23 of said $3,000 are called "interest paid Martin," and charged to the firm, in place of money of the firm then in the defendant's hands.

3. That there may be no mistake about this matter, we state what all the exhibits show, and the defendant admits, that said $3,000 was a part of the $18,000 time drafts, maturing in August and September, 1848, and given to the complainant on the 28th

June, 1848. To prove this, we cite answer of the defendant, and the bill of complaint. (Record, 61, 62, 63, 10, 11.)

But whether said $3,000 were paid as a consideration for complainant's interest in the business, or as a debt due complainant, matters not. It is certain said $18,000, which included said $3,000 were paid with the funds of the firm, and are charged to the firm as money disbursed by the defendant belonging to the firm. In proof of this, see the following evidence:

1. The pages of bill and answer above cited. (Record, 10, 11.)

2. Plaintiff's exhibit, No. 263, which calls said $18,000, and the money included in the same charge, "Notes, &c., paid Martin & Co., June, 1848." (Record, 481.)

3. The bill of said $18,000, in defendant's hand-writing, dated June 28, 1848, saying said $18,000 were paid Martin & Co., exhibit by stipulation, at the hearing. (Record, 568.)

4. Defendant's accounts 2d and 3d show said sum of $18,000 charged to the firm.

5. The memorandum of settlement: Plaintiff's Exhibit, 262, and the bill of complaint, show said $3,000 paid by the firm as interest due the complainant. (Record, 481.)

The defendant paid said $3,000 with money belonging to the firm in the first place; and then the defendant included said $18,000, of which these $3,000 were a part, in the liabilities of the firm, said to be $26,579.95, and received payment of Field and the complainant for two-thirds of said $3,000 a second time; now the defendant asks that he may receive said $3,000 a third time from the complainant, and interest thereon.

VIII.

Eighth Exception, (Record, 1188,) 61½ per cent., 56 per cent. We have already shown that 56 per cent. is, and has been since 1850, more than the share of complainant's interest in the taxes, salaries, and expenses, paid on the lands of the complainant and the defendant, for reasons therein assigned. We here state that the defendant cites no proof, and assigns no reasons, why the Master

has "erred" in this charge, and he can cite none to show the charge ought to be 61⅓ per cent. instead of 56. By taking the values placed in the schedule of division, and the memorandum of settlement, on the assets set off to the complainant and the defendant, and adding them together, we ascertain the complainant's share to be 56 and the defendant's 44 per cent. Thus 56 per cent. of the aggregate set off to complainant and defendant is $20,925, and 44 per cent. of said aggregate is $16,389.91, and these are the respective valuations placed on the assets of the complainant and defendant at the division. Want of candor and a disposition to "do equity" are manifested by the defendant in every step of progress in this suit. If the complainant should be charged with 61⅓ per cent. of all the disbursements on the assets of the complainant and defendant, then, of course, the complainant will be entitled to receive a credit of 61⅓ per cent. of all the cash received, from the interest of the complainant and the defendant; but, though in defendant's account 4th, he charges the complainant 61⅓ per cent. of all disbursements made, he does not, in said account, in any case, give the complainant 61⅓ per cent. of the cash receipts. If the rule is worth anything it must apply to the receipts as well as the disbursements.

This may be an unintentional error on the part of the defendant. The clerk of the complainant made the same error, and applied it to the receipts, investments, and disbursements, in the book called "Book of Statements;" but when the accounts were brought before the Master, he detected the error and corrected it, and adopted the basis of 56 per cent., according to the memorandum of settlement. We would here call attention to the fact, that though the interest of the complainant in all the assets of Brooks, Field & Co. not set off and divided to S. C. Field, is shown by the Master to be 56, and though this exception of the defendant implies it was 61⅓, yet if the complainant gets all the Master gives him in his report of July 1, 1861, it will not amount to 40 per cent. of the joint assets of the complainant and the defendant, now in the defendant's possession. Thus the court will see that the innocent party is made to suffer at every point in this case.

2. Items of Exchange. Said Master did not err, as the exception states, in not crediting the defendant the amounts paid for exchange by the agents of the defendant, for the following reasons:

1. The defendant had, after the division, no Eastern funds to pay for the liabilities of complainant and defendant.

2. The exchange was worth to the defendant what his agents paid for it.

8. A great portion of the payments made for lands to said agents was made in gold, which was remitted to the defendant, and cost him no premium, but was always worth a premium to him. All these facts appear from the exhibits. Here the unfairness of the defendant is seen again. In his accounts he has charged himself nothing more than the amounts received in gold and exchange on the East, and has given no credit for the premium received on said gold and exchange. If a balance between premium received and premium paid by the defendant was struck, it would be largely against him.

4. Specification: $85.71 taxes on land in Outagamie Co. This land was set off and belongs to the complainant, and if the taxes on it have been paid they should be charged to the complainant. We are not aware, however, that there are any tax receipts in the case, showing said taxes paid. The Master made a mistake in saying said land was not set off to the complainant. Not knowing the localities of the towns and ranges, he confounded this with another county in which the defendant has lands, and the complainant has none.

IX.

NINTH EXCEPTION—(Record, 1188). SALARY TO DEFENDANT.

We have shown that the Master erred in crediting the defendant with any salary at all, and to what we there say we refer for our answer to this exception.

X.

Tenth Exception—(Record, 1188). Lands set off to Martin by Gilman.

It seems a work of superrogation on our part, after all we have said upon this point, and after the court has twice decided and the Master has twice found this division to have been made, and the lands to have been set off to the complainant, to cite evidence on the point, or further to argue the question. But the court, in the decision of June 6, 1861, has ordered the accounting to commence at said division, and if the defendant can now establish that no such division took place, he hopes to prevent an accounting altogether, and this is what the defendant has, in the written preface to his account, notified us he intends doing. We will, therefore, meet him once more on this question.

1. Did Gilman at said division, profess to represent and act, and did he represent and act, for Martin? To prove that he did, we cite the following evidence:

1. "Defendant further answering, states that it is true that in the Fall of 1848, he took with him to Wisconsin a lawyer by the name of "John M. Gilman," not "Jessee Gilman," for the purpose of facilitating a settlement with said S. C. Field, and a division of the property of Brooks, Field & Co., and that said Gilman and defendant demanded and required, from said S. C. Field, a division of the lands of Brooks, Field & Co. (Record, 69.)

Here the defendant admits that, in the Fall of 1848, he took with him to Wisconsin said Gilman, and that Gilman and the defendant demanded and required of S. C. Field a division of the lands of Brooks, Field & Co. In whose name did Gilman make said demand?

2. In the second, third and fourth accounts of the defendant, he charges $116 for the services of Gilman at said division, and the Master has allowed the charge in both his reports. If Gilman did nothing for Martin at said division, as defendant contends, he does wrong to charge Martin the compensation paid Gilman, and

the fact that the defendant has made this charge to the complainant, in his account 4, estops him from denying the services rendered by Gilman.

3. The deposition of B. F. Field states, "a man by the name of Gilman represented Martin" at said division.

4. Deposition of B. F. Field: "He knew Gilman acted for Martin at said division, by what Brooks and Gilman said, and by what Gilman did."

5. The deposition of S. C. Field says: "Brooks said he so acted, and he professed so to act, and did act."

Mr. Field, in his deposition, shows that Gilman not only demanded the division and setting off of Martin's lands, and set them off, but he governed the prices at which all the lands were set off by controlling the largest interest in the firm.

6. The deposition of Gilman says he did three things at said division: 1st—He professed to represent Martin and acted for him. 2d—He demanded a division of said lands and assets, and the setting off of the share to Martin to him; and 3d—He set off Martin's share to him.

But the defendant says said lands were set off by him and not by Gilman. That this statement is not true appears from the schedule of division and from the memorandum of settlement; plaintiff's Exhibits, 260 and 262, which show that, until after the division was completed, the interest of Brooks & Field was set off and remained together. During the whole of the division Gilman appears on one side, advocating the rights of Martin, and Brooks and Field on the other, protecting their joint interest. The papers and testimony all show, both Brooks and Field acting, during said division, in opposition to Martin instead of for him. After the division was completed, the defendant, as the agent of Martin, ratified what Gilman had done, by signing the memorandum of settlement for Martin, and this is all he did for Martin. But the defendant says, when Gilman acted for Martin, he was acting for the defendant, because the defendant had purchased the interest of Martin. But the court has twice said that the purchase from Martin by Brooks,

was improperly made, and that it is null and void, and, of course, anything the defendant may predicate upon it is null and void also.

If, therefore, it appeared upon the face of the papers, which it does not, that when Gilman set off the land in the name of Martin, he did it for the benefit of Brooks, and the whole matter had been well understood by Field and all present, it would have given to the defendant no title to said lands so set off, when the purchase, under which the defendant claims and holds said lands, is set aside and declared null and void, as this purchase is in both the decrees. We refer under this head, for extended remarks, to what we have said elsewhere in our brief, about setting off lands to Martin.

XI.

Complainant's Exceptions to Master's Report Allowed by the Court below.

For that the said Master in his said report, (Record, 1140), states: "I also add the items charged by defendant as salary; I disallowed this item in my former report, as I then thought the defendant not entitled thereto, under the circumstances of the case, he being a trustee in fact, but denying the existence of the trust relation; and this suit being brought against him for an account as such trustee, which he should have rendered without suit. I was of the opinion as a matter of law, that he was not entitled to compensation for services. This was also the construction of the law on the pleadings and proofs, which I supposed necessarily resulted from the decree of April 9th, 1860. The claim, however, is now made under the opinion delivered at the time of making the order of reference of June 6th, 1861; and although there is no clause in the order of that date, directing the allowance of compensation, I have felt bound to allow it in accordance with the opinion of the court, without regard to my own opinion on the subject."

And said Master, (Record, 1140), allowed the defendant $5,100 for salary to the time of accounting. Whereas, said Master should not have allowed said compensation for the following reasons:

1. Said defendant was, and is, a trustee in fact, denying the trust relation, and resisting the claims of his *cestui qui trust* for the recovery of the trust funds in his hands; and to such a trustee the law gives no compensation.

2. All the pleadings, proofs and exhibits in the case, and the opinions and decrees of the court, show the defendant sustains this relation to the complainant.

3. The decree of the court, under which the said charge of $5,100 is made for the salary of the defendant, as the Master admits in the above extracts from his said report, does not order or require the Master to make said charge, nor does said decree allude to said compensation to said defendant, and said Master in making said credit to defendant, has not only transcended his own views of what is lawful and right, but he has transcended the order of the court likewise. Said decree written as it was by the judge himself, after due deliberation, and a part of the record of the case, should have been taken by the said Master as the embodyment of the opinion, and judgment of the court, in preference to the looser expressions of the opinion, which is no part of the record, and therefore, never as well and carefully written; and said Master should not have gone outside of said decree, to do injustice to the complainant and to benefit the defendant, the wrong doer in the case. (Record, 1107.)

4. The defendant advanced no money to said business of Brooks, Field & Co., but said defendant was, as the said opinion of the court admits, and as the articles of agreement, Exhibit 1, attached to bill of complaint, show, to pay for his interest in the profits of said business by his labor; but before said division in the Fall of 1848, the defendant, instead of doing the work himself, which he had contracted to do, and was to be paid and has been paid for doing, remained a great part of the time at his own home in Ohio, attending to his own private affairs, and neglecting those of Brooks, Field & Co., and employed agents to do his work, and said agents were paid, not by the defendant or with his money, but by said firm and with their money.

That said agents have been compensated out of the funds of the complainant to the full extent of his interest in all of their charges for salary, commissions, and expenses, and much more than his real interest therein; see

1. The deposition of the defendant. (Record, 700.)

2. The report of the Master of July 1, 1861, (Record, 1135, 1138, 1139 & 1140), showing fifty-six per cent. of all the salaries, taxes, and expenses, and five per cent. commissions, have been charged to the complainant, for all the lands attended to or sold by said agents, for the interest of complainant and defendant. Also all the accounts of said agents. (Record, 769, 922 & 1038.)

5. The evidence already cited shows that up to the Fall of 1852, the defendant, instead of remaining in Wisconsin and attending to the sales of his lands and those of the complainant, remained at New Lisbon, Ohio, attending to his own private affairs, and left said lands in the hands of his agents, who attended to them, and were paid therefor, the defendant making an occasional visit to Wisconsin only. (Record, 270 to 299, 323 & 332.)

That since the removal of the defendant to Wisconsin in the Fall of 1852, the whole time of said defendant has been employed, not in attending to the selling of his lands and those of the complainant, but in improving and profitably cultivating said large A. L. Field farm; in building and improving houses and barns thereon; in making large and expensive additions to said mill property; in building a dwelling and other houses and barns thereon; in extensively running said mill; in attending to the business of said town or city of Beloit as an Alderman; in publishing a newspaper in said city, and in attending to, and regulating, the politics of the State and nation generally. (Record, 856 & 917.)

That the defendant has been thus employed, and has not neglected his various avocations, and that he has not had the time from his other engagements, to even visit his agent once in three years, appears—1. From all his letters to C. D. Cole and G. C. Cole on file in the case, and numbered from 1 to163 before the Master. (Record, 855, 917.) 2. From the defendant's account No. 3, in

which he details the improvements on the said mill property and said A. L. Field farm. 3. From the letters of C. D. Cole and G. C. Cole to the defendant, hereinbefore referred to. (Record, 918, 1018.)

Said defendant did little else, in connection with the lands belonging to him and the complainant, than write letters once or twice a month, receive the money collected by his agents, and hold it at seven per cent. when it was worth to him twelve and twenty, and then to employ said money in trying to prevent his *cestui que trust* from collecting it.

It is manifestly wrong that the complainant should pay the same compensation to agents for attending to and selling his lands, that the defendant paid for selling his, and that other land holders paid for selling theirs, and then pay the defendant a large salary besides, for doing what he did not do, and what has been otherwise paid for.

But the Master has certainly misconstrued the opinion of the court upon this point. The court is careful to state in its opinion that it wished to place the lands of the complainant in the same condition they would have been in, had the defendant handed them over to him at the close of the division. This is precisely right; what would the complainant have done with them, had they been handed over to him? He would have attended to them himself, or have employed the defendant, S. C. Field, B. F. Field, C. D. Cole, G. C. Cole, or some else, to sell said lands and remit him the money, they retaining their expenses and commission, just as the defendant did, and as other land holders did; but he certainly would not have employed them and paid them for doing all he wished done, and then paid the defendant a large annual salary for receiving said money from said agents, and holding it, against the wishes of the complainant, at seven per cent., when, both in Wisconsin and New Orleans, it was worth from twelve to twenty per cent. interest.

But it is unheard of in a court of equity, that a trustee should be allowed compensation *for four years*, in which he has been employing the funds of his *cestui que trust*, to prevent him from collecting

the trust funds in the hands of the trustee; but this is precisely what the Master, is his Report of July 1st, 1861, does, and what he has understood the court to require him to do. If this be the requisition of the court, it will apply as well to the ten years to come, as to the four years that are past, in the progress of this case. The allowance of this salary, lays before the defendant a stronger inducement to continue his resistance to the just claim of his principal.

But suppose the defendant had done the work himself, or paid out of his own pocket, others for doing it, he has already been not "reasonably," but most extravagantly paid for it, by what he has realized from the business, and this is the only compensation the articles of co-partnership contemplated.

Said defendant has received from the share of complainant alone, including interest at 7 per cent., fully $100,000 in cash, for which the complainant can charge him only 7 per cent. interest, when said money has, all the time, been worth to the defendant never less than 12, and in many instances 20 and 25 per cent. To show that he has received said sums from the share of the complainant, see the account of the complainant against the defendant, made up to meet the order of the court of June 6, 1861, though not containing near all the cash items with which the defendant should have been charged, in book reported by the Master, called "Martin's Account," in which the items of cash are stated, and the proofs referred to. Books 2, 4, 6, 7, "account of G. C. Cole," and all the accounts of B. F. Field, C. D. Cole, G. C. Cole, H. H. Gray, and defendant's accounts, 1, 2, 3, and 4, show the same thing.

To show that money was worth to the defendant what we state, see the following evidence:

1. Plaintiff's Exhibit, 266, and deposition of S. C. Field, show 12 per cent. paid the defendant by said Field for said $1,400, called "Collections and Interest" in said Exhibit 266. (Record, 487, 489, 490, 714, 715, 716.)

2. Plaintiff's Exhibit 268, and depositions of S. C. Field and B. F. Field, show they paid the defendants 12 per cent. interest for the sums in said Exhibit 266. (Record 488, 489, 715, 707, 708.)

3. Plaintiff's Exhibit, before the Master, "A. H.," and the deposition of B. F. Field, relating thereto, show the defendant charged said Field 12 per cent. interest on the sums therein stated.

4. Plaintiff's Exhibit 405, and the deposition of H. H. Gray, relating thereto, show the defendant charged said Gray, and collected from him, 12, 20 and 25 per cent. for the sums set forth in said Exhibit 405, up to Sept. 2, 1852. (Record, 1046, 99, 693.)

5. The depositions of H. H. Gray, and the deposition of L. G. Fisher, show 12 per cent. per annum paid by said Gray for $1,644 due the defendant from the 2d September, 1852, to the 30th April, 1856. (Record, 690, 691, 692, 693, 694.)

6. Plaintiff's Exhibits 51, 54, 50, 55, contain orders to the agent of the defendant, B. F. Field, in no cases to charge less than 12 per cent., and after the maturity of an obligation to charge 20 and 25 per cent. (See the exhibits.) From October, 1847, up to the time of the change of the law from 12 to 10 per cent., in 1859, it was the universal practice of the defendant, and his agents under his orders, to charge 12 per cent. interest on all loans of money or deferred payments; and they often charged more. (See all the accounts of sales hereinbefore referred to. Record, 295, 297.) The defendant has received from the lands set off to him, and to S. C. Field, some $90,000 in cash since the division, including interest at only 7 per cent., as will appear from the following evidence: 1. The defendant's answer shows $12,000 to $14,000 received from the debt of S. C. Field. 2. The 2d and 3d accounts of the defendant show $8,836, and interest, received from the debt of said Field. 3. The "Result Book," from pages 120 to 127, and the 4th exception of the defendant to the Master's Report of April 1, 1861, show items of cash received by the defendant from the sales of said Field's lands, from the division to June 8, 1852, after deducting all expenses and charges thereon, the sum of $11,962.

5. In addition to the above $11,962, received by the defendant from the sales of said Field's lands, plaintiff's Exhibit 266, and the deposition of S. C. Field, show the payment by said Field, to the defendant, on the 31st October, 1850, $1,550 and $800.

6. Also, on the 30th October, 1850, $1,287.37. (See deposition of S. C. Field, and plaintiff's Exhibits, before Master, R and T, and answer.

7. June 8, 1852, $1,300. (See deposition of S. C. Field, and plaintiff's Exhibits, before Master, S, 2 and T.

8. For all these sums, and the evidence which supports them, see book of "Locations and Sales," p. 159, and "Result Book," p. 108, in which the items are stated.

9. For the cash received from the lands of the defendant, since the division, 1: See all the accounts rendered to the defendant, by B. F. Field, from Nov. 8, 1848, till October 11, 1850, and all the accounts rendered to the defendant by C. D. Cole and G. C. Cole, from the 11th October, 1850, until now, all on file in the case, and their numbers hereinbefore given. The accounts of B. F. Field also show the money received from the lands of S. C. Field by the defendant. 2. The accounts 2 and 3, filed by the defendant with the Master, and reported by him, also show items of cash received on account of the complainant and defendant, from lands set off to them. 3. Books 2, 4, 6 and 7, and book called "Account of G. C. Cole," show items of money received by the defendant, from the lands set off to himself, to S. C. Field, and to complainant. All said $90,000 thus received by the defendant, from his lands and those of Field, have been worth to defendand from 12 to 25 per cent. per annum.

Said defendant has now on hand some 7,000 acres of valuable land, all of which he has derived from this business, worth $70,000, while the complainant has only some 5,500 acres now on hand.

For the value of said lands, see the letters of the defendant to G. C. Cole, March 6 and April 5, 1856, plaintiff's Exhibit, before the Master, 100 and 101, $10 per acre; also the deposition of L. G. Fisher before the Master, pp. 44, 45, 46 and 47, says, from $9 to 15 per acre. The defendant has, also, said A. L. Field farm, worth from 40 to $50,000; and some 300 acres of land in addition, adjoining said A. L. Field farm, worth, at the lowest estimate, $10,000; and said mill property, which has cost some $44,000, as

the report of the Master and account 3 of the defendant show, worth some $50,000; besides bank stock, and other valuable personal and real estate, worth a large sum, and, as the defendant admits in his answer, pages 101-2-3-4-5-6-7-8-9-10, the defendant has derived all of said money and property from this business, without investing any money therein; and we claim that what the defendant has received for his attention to said business is not "*reasonable*" but very "*unreasonable*" compensation for all he has done in said business.

We have already shown herein, that when the defendant went into this business he was poor, and had difficulty to support and educate his family; since that time he and his family have had a splendid living of thirteen years out of said business. The opinion of the court, under which the Master professes to have made said charge, but which the court did not embody in the decree, says nothing more than that the Master should allow "said agents and Brooks *reasonable* compensation," and this he has had, and we have confidence the court will yet say so.

MAT. H. CARPENTER,

For Complainant and Appellee.